COMPULSORY MENTAL TREATMENT AND THE REQUIREMENTS OF "DUE PROCESS"

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After nearly one hundred years of agitation and at least three Royal Commissions, the British Parliament early last year finally prepared to act on a brand new Mental Health Bill.[1] Meritorious on many counts, the bill, nevertheless, was criticized by some legal authorities as lacking adequate guarantees of individual rights. Under the bill, a person alleged to be mentally ill may be brought to a hospital and detained there upon the certificate of two private physicians, there being no requirement for a prior court hearing. And unless the patient demands and succeeds in getting a review of his case by a special review tribunal, such medical-administrative detention may be extended indefinitely.[2]

Until the very end, the opposition to the bill had hoped that Prime Minister Macmillan might call a general election in the Spring, in which eventuality Parliament would have been adjourned and all business before it would have been discontinued. Or, this failing, it was hoped that the meager cells of resistance to the bill would succeed in enlisting stronger support. But these speculations did not materialize. Thus England, mother of the Magna Carta and the Bill of Rights, gave birth to a new law for the compulsory treatment of the mentally ill which provides only a vague definition of mental illness and permits the commitment of alleged mental patients without benefit of any judicial determination. Admittedly, in the hurly-burly of the legislative battle the opponents failed to grant the bill its full due for endeavoring to remove from mental illness the stigma of criminality and public disdain and fear. This the bill most faithfully undertook to do. Yet, in the excitement of reform the proponents likewise apparently forgot that individual rights have almost as often been infringed upon by those professing to do good as by those admitting to do evil.

The adoption of the bill[3] is not surprising for it follows a trend that has become in recent times increasingly prevalent in Anglo-American law—a shift from the strict judicial process to more relaxed and

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1 Bill 53, 7 Eliz. 2 (1958).

2 Bill 53, 7 Eliz. 2, part IV, § 26 (1958).

3 Mental Health Act, 1959 7 & 8 Eliz. 2, c. 72.

less precise quasi-judicial and administrative procedures.[4] This shift, carried out in the name of more effective justice and purporting to provide more specialized and speedier law, has been apparent not only in new areas of social control, such as juvenile delinquency and sexual psychopathy, but has also been felt in areas such as compulsory mental treatment, which have old standing and strict judicial traditions. The shift has been widely endorsed by social reformers as a departure from anachronistic legal formalism. But several islands of resistance have persisted in arguing that what is referred to as legal formalism is in fact an essential guarantee of individual liberties. What is an unusual and possibly the most ludicrous feature of this trend is that it coincides with a recent reverse trend in Soviet law, carried out in the name of greater individual liberty and restoring many of the traditional concepts of "due process of law" which were originally discarded as bourgeois nonsense.[5]

The enactment of the new British Mental Health Bill will undoubtedly give impetus to the American movement for similar reform in mental illness law. It is generally conceded that such reform is overdue. As long as a hundred years ago it was already claimed by a leading psychiatrist that . . . "while so much has been done . . . to promote the comfort of the insane . . . we remain perfectly satisfied with the wisdom of our predecessors in everything relative to their legal relation."[6] Still, despite the number and complexity of the legal problems posed by mental illness, this was until recent years one of the most neglected of all legal fields.

The failure of this field to get its due legal attention can be primarily explained by the absence of a moving power behind it. Unfortunately, the "insanity" field was deprived of its most powerful lobby through a process of human erosion, in institutions where cure was the exception rather than the rule. With the voice of the mentally ill themselves muted and their families either too willing to be relieved of the burden of care, or too poor, or too eager to conceal the family "stigma," appeals to legislature, the courts and the legal profession were rather few. This legal situation, however, appears to have been part and parcel of a general pattern of neglect in everything connected with mental illness.

"Though human mental illness is ages old," says a recent com-

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[4] Kadish, "A Case Study in the Signification of Procedural Due Process," 2 Western Political Quarterly 93 (1956).

[5] Recent dispatches from Russia in daily and periodical press. Time, January 5, 1959, p. 32.

[6] Ray, Medical Jurisprudence of Insanity, 1838, as quoted in Zilboorg, "Legal Aspects of Psychiatry," in One Hundred Years of American Psychiatry 547 (1944).

mentator, "virtually everything known today about its physical treatment has been learned in the last twenty years."[7] But with the recent growth in medical knowledge and the development of new concepts of institutional care—coupled with the ability of chemistry and medicine, at long last, to offer a glimmer of hope for effective treatment and cure—pressures have mounted for a total reappraisal of society's attitude toward mental illness. Since much of this attitude is reflected and shaped by the applicable legal framework, special attention has been directed to the need for legal reform. Many have criticized the law for its unwillingness to change rapidly enough, yet against them there have been others who fear that hasty and unwarranted reforms may remove the traditional legal safeguards without providing adequate substitutes.

Whether adhering to one view or the other, it can be generally conceded that the increased knowledge of mental illness and the developments in the therapeutic sciences now provide the law with the evidence and motives for a reappraisal of its role. This is the function of this paper. In undertaking such a reappraisal, we shall need to deal not only with the general pattern of the law as it now exists and with the social motives and aims underlying such laws, but also with the basic constitutional concepts which may determine to what extent the reforms instituted in England and on the Continent can be undertaken in this country. Of particular interest will be the constitutional requirement of "due process," which incorporates in it the sum total of American society's concept of legal fair play and which has come to mean not only the observation of procedural propriety but also the maintenance of an appropriate balance between the public and the individual, the general interests and the special ones.

Mental illness provides a field wherein there exist urgent new social needs. An evaluation of the law pertaining to the mentally ill thus provides an especially fitting opportunity for the assessment of the meaning of "due process" in a changing social order. And what is learned here about the flexibility and adaptability of the law could probably provide adequate guideposts for application in other areas as well.

The History of Commitments to Mental Institutions

Mental disability is one of the country's great concerns of the day. More than half of all the beds in our hospitals are occupied by mental patients, and the economic and human losses due to mental illness are immeasurable. Of the approximately 11,400 children born

[7] Martin, "Inside the Asylum," Sat. Eve. Post, Nov. 10, 1956, p. 130.

each day in this country, 340 are mentally deficient. Of every twelve children born currently, one, according to recent projections, will at some time in his life suffer a mental illness severe enough to require hospitalization. There are about 1,500,000 people in the United States suffering from mental illness, about the same number of mentally deficient people and some 7,500,000 who have some other personality disturbance.[8]

Not all of those who require mental treatment obtain it, but even so the statistics of mental patients are staggering. Over 250,000 new patients are committed to mental institutions each year—three times as many people as are sentenced to state and federal prisons. Over one million patients are on the books of the mental institutions —more than five times the total prison population. The figures would be even higher if the laws providing for the commitment of alcoholics, drug addicts and epileptics were more fully utilized. It is estimated that there are more than three million excessive users of alcohol in this country, a million and a half epileptics and an unknown number of drug addicts, most of whom are subject to commitment.[9]

To understand the role and functioning of commitment in American law we must examine its origins. These we must trace to 17th, 18th and 19th century economic and social development in England and in America.

The commitment of the mentally ill, in its modern sense, was unknown in American law until about the first quarter of the last century.[10] The mentally ill came in contact with various phases of the law long before that, but these contacts were either for the purpose of property protection—as in the case of guardianship—or else lacked the combination of compulsion and permanence inherent in commitment. The violent mentally ill were then accorded the treatment applicable to criminals generally, which consisted of detention in jails. The non-violent and indigent insane, on the other hand, were treated in the same fashion as were all other paupers, by being provided with food and shelter. But these practices took no notice of the distinctive character of the mentally ill as a class, and it was only after mental institutions became prevalent that commitment to them finally introduced a system designed especially for the mentally ill. This, however, happened only with the increasing state interest in public welfare and the advent of the public mental institutions.

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[8] American Psychiatric Assoc. & N.A.M.H. Joint Information Service, Fact Sheet No. 5, Table 3 (March, 1958).

[9] American Bar Foundation, The Mentally Disabled and the Law, A Draft Report of the Project on the Rights of the Mentally Ill 30-35 (1958).

[10] Consult Deutsch, The Mentally Ill in America (2d ed. 1949).

Commitment establishes a system of compulsory custody and treatment for the mentally ill. It does this through physical control and supervision over the person of the mentally ill, which control is usually delegated by the state to a public or private institution. This control must be distinguished from the power of guardianship. Guardianship is a much older institution and its major emphasis is upon the protection of the proprietary assets of the mentally ill, the protection of the personal interests being secondary only.

The authority of the state over the person of the insane may be traced to three different sources. The state as the preserver of the peace may exercise its police power in all cases where the public peace is disturbed or is being threatened.[11] One of the first contacts between the law and the mentally ill was therefore in the case of the "furiously mad," those requiring immediate confinement in order to stop, or to prevent, acts of violence.[12] The right of the state to restrain the violent is given recognition by early statutory enactments, but its origin predates legislation, and it is said to be one of the inherent rights of the sovereign.[13] Even the Constitution, according to many authorities, supposes the pre-existence of the police power.[14] This police power was later modified and incorporated in the commitment laws, but even today the common law police power may serve as authority for the control of the mentally ill when legislation is not available.

A second source for the state authority is the sovereign's position as *parens patriae,* the father of the country.[15] As *parens patriae,* it was the sovereign's function to protect the proprietary and personal interest of his subjects. "The King," says a typical commentator, "as the political father and guardian of his kingdom, has the protection of all his subjects, and of their lands and goods; and he is bound, in a more peculiar manner to take care of those who, by reason of their imbecility and want of understanding, are incapable of taking care of themselves."[16] The guardianship of the legally disabled in England was originally a role performed by the feudal lord as the master of the manor, but this function was assumed by the King during the

[11] The reference here is to the police power in the strict or narrow sense. In a broader sense the term could encompass all state actions. See Freund, Police Power, iii, 242 (1904).

[12] For one of the first laws of this kind in this country, see New York Laws ch. 31 (1788).

[13] Eubank v. Richmond 226 U.S. 136 (1921); Drysdale v. Prudden, 195 N.C. 722, 143 S.E. 530, 536 (1928); 11 Am. Jur. "Insane Persons" § 245.

[14] 11 Am. Jur., "Insane Persons" § 245.

[15] Blackstone, Commentaries 427 (1783).

[16] Shelford, The Law Concerning Lunatics 9 (1833).

latter part of the 13th century, once the Crown's position became consolidated. Early historians say that the guardianship of incompetents was made into a royal duty in order to end the abuses inherent in the more decentralized earlier arrangements.[17] A more critical history of this transfer of duties must not fail to emphasize also the political and economic advantages to the Crown resulting from it. The assumption of the new function permitted the King not only to supervise the management and transfer of the property of the insane but also provided him with a source of revenue from the profits of the estates under his guardianship.[18] The sovereign's function as *parens patriae* was later delegated to the Lord Chancellor, and in the United States it was inherited by the individual states. From this source grew primarily the incompetency and guardianship laws, but the theory of *parens patriae* had its effect also upon commitment theory and legislation.

Of more recent origin is the authority assumed by the state over insane persons as members of the "pauper" community. In England up to 1600 it was the Church that was responsible for relieving the needs of the poor. Due to the Reformation and the economic changes of that time the Church was no longer equal to the task, and the civil authorities were forced to assume the responsibility under the Poor Law. The destitute insane were thus accorded the same treatment as paupers generally and were exposed to the same experiments in public care—workhouses, the farming out to contractors, the payment of doles and the hiring to farmers.[19] The abuses of the system finally brought an end to the practices of providing relief outside institutions, and well-regulated workhouses became the only recognized forms of poor care. From these workhouses the public asylum for the mentally ill branched out as a specialized institution. The American experience was very similar, and only after the middle of the last century did the American system of poor relief, based largely on the early English Poor Law, move to provide completely separate facilities for the insane and the feeble-minded.

The original commitment procedures were extremely informal. The 1851 Illinois commitment statute, for example, provided that "married women and infants who, in the judgment of the medical superintendents of the state asylum at Jacksonville, are evidently insane or distracted, may be entered or detained at the request of the husband or the guardian of the infant, without the evidence required in other cases."[20]

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17 *Id.* at 10; 2 Reeves, History of the English Law 307 (1814).

18 Blackstone, Commentaries 303 (1783).

19 18 Encyclopaedia Britannica 214 (1943).

20 Ill. Laws 1851, § 10, at p. 96, 98.

But the increase in the number of commitments and the absence of controls and supervision finally resulted in abuses, and it was as a consequence of these abuses that the elaborate procedural details of present day commitment were generally adopted. The most famous crusader for the tightening of the commitment laws in this country was Mrs. Packard, an ex-patient who set out in the 1860's to stir up public concern to make "railroading" to lunatic asylums impossible.[21] Her exposés resulted in the introduction of many of the formal legal safeguards of due process into this field, including the right to a hearing and a jury trial in determining the question of insanity. The new laws drew mainly from the early incompetency proceedings and criminal law practices, neither of which was especially well suited for the new purpose.

Many, especially psychiatrists and the allied professions, have argued over the years that the introduction of these legal formalities made treatment less accessible and retarded the development of mental health. Others argued that the introduction of legal principles into the insanity field was of great importance and that legal guarantees are necessary whenever society sets out to deprive its members of their liberty or property, whether in criminal cases or in others.

The formal procedures for commitment have existed for about a century with few modifications. In recent years, however, there have been many attempts at change, and the claim has been often repeated that the law has failed to recognize the new needs and the better ideas in this area.

WHO IS SUBJECT TO COMMITMENT?

In the common law tradition the involuntary restraint and detention of an insane person was justified as part of the sovereign's police power, but its exercise was limited to situations involving danger to persons or property. The jail usually provided the facilities necessary for such restraint. With the advent of the public mental institution in the middle of the nineteenth century, facilities were created not only for short-term restraint but also for long-term commitments.

Although no clear, formal departure from the rule that commitments should be limited to the dangerously insane has ever occurred, present commitment policies are much broader. This liberalization came into effect almost unnoticed, for at no time have the legal principles underlying it been given appropriate consideration and attention. One writer maintains that the liberalized trend was given judicial

[21] Curran, "Hospitalization of the Mentally Ill," 31 N.C.L. Rev. 274, 276 (1952-53).

endorsement by Chief Justice Shaw as early as 1845,[22] but the cited case contains no clear expression of such view.[23] That this case can and need be considered a landmark in the development of commitment law serves as one more illustration of the scarcity of legal thought in this area.

The broader commitment policy has been evident not only in the day-to-day commitment practices but also in the language of the law. In many states the commitment laws now accept the patient's "need for treatment" as a condition justifying commitment and do not require a showing that there is a likelihood of danger should the person remain untreated. Only eleven states any longer use the term "dangerous" in describing those who may be committed. A recent Pennsylvania statute permits instead the commitment of anyone who suffers from a mental illness which "... lessens the capacity of a person to use his customary self-control, judgment and discretion in the conduct of his affairs and social relations."[24] The Draft Act for the Hospitalization of the Mentally Ill[25] likewise provides for the commitment of those who are "in need of care or treatment" and lack sufficient capacity to make responsible decisions regarding admission.

While most statutes emphasize the protective and curative elements for commitment, some have embarked on different directions. Massachusetts, for example, apparently makes social nonconformity grounds for commitment and provides for the involuntary hospitalization of any person subject to a "character disorder" which renders him so deficient in "judgment or emotional control" that he is likely to conduct himself in a manner which "clearly violates the established . . . conventions of the community."[26] These provisions, which are generally recommended by medical circles as a means of reaching ill people in early stages, have been viewed with alarm by many. If these acts would allow the indeterminate hospitalization of the severe "neurotic" against their will, it is said, this cannot rest on the doctrine of *parens patriae* nor can it rest on the public health or police powers of the state. It might be related to the public welfare, but it is seriously questioned if the public welfare is sufficiently involved to support such deprivation of liberty.[27] A number of persons with cancer or heart disease do not possess sufficient knowledge of their

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[22] *Id.* at 274, 291.

[23] Matter of Josiah Oakes, 8 Law Rep. 122 (Mass. 1845).

[24] Pennsylvania Mental Health Act of 1951, § 102 (11).

[25] National Institute of Mental Health, Federal Security Agency, A Draft Act Governing Hospitalization of the Mentally Ill, § 9(g)(3) (Public Health Service Pub. No. 51, 1952).

[26] Mass. Ann. Laws ch. 123, § 1 (Cum. Supp. 1956).

[27] Curran, *supra* note 21, at 291.

illness to understand that hospitalization would be best for them; or, if they have such knowledge, they may still refuse to follow medical advice which would prolong their lives or improve their health. Should this latter group be treated in the same manner as it is proposed to treat the mentally ill?

Even a limited analysis of the statutes, the practices and mental illness statistics indicates that commitment has served as a multi-purpose remedy. Commitment has served not only to prevent breaches of the peace and harm to persons or property but also to provide treatment and attempt recovery, to relieve the family of the need to care for a disabled member, and to provide a place for the miscellaneous groups of problematic and maladjusted people that would not fit anywhere else.[28] The relative importance of these purposes in the commitment pattern has not always been the same and has increased or decreased with social and technological changes. Obviously little consideration was given to the curative aspects of commitment as long as the medical arts were helpless in the treatment of mental illness. Likewise, changing social conditions and the absence of other facilities have tended in recent years to turn commitment and the mental institution into a dumping ground for the aged, the senile and many unwanted others. A recent report describing the Texas situation thus claims that ". . . seventy per cent of all the patients don't need to be in a mental hospital . . . . They could be treated at home, in clinics, or other institutions."[29]

Whether custodial, curative or protective, all these commitment purposes appear to be worthwhile social aims. But whether, under our system of laws, compulsion and legal sanction may be used for the accomplishment of these purposes is a question not fully determined.

In recent years the opposition to liberalized commitment has become increasingly vocal. Say they:

> The citizen's right to his personal behavior and beliefs cannot be infringed upon where his behavior injures neither himself or others. Social nonconformity is often called mental illness. Hasn't an individual the right to believe, act or seek cures according to his own ideas? Hasn't he the right to refuse medical judgments and treatments on the grounds of individual choice?[30]

The medical people, on the other hand, preach preventive medicine and argue that to wait until a mentally ill person becomes dangerous is to delay improperly the needed treatment. Mental illness, they say,

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28 Belknap, Human Problems of a State Mental Hospital 32 (1956).

29 Gainfort, "How Texas is Reforming Its Mental Hospitals," The Reporter, Nov. 29, 1956, p. 19.

30 Memorandum submitted by Mrs. Margaret Seeger to the American Bar Foundation, Feb. 12, 1957.

differs from all other illnesses in that it affects the mental processes, and it is society's duty to provide treatment for it because of the ill person's inability to recognize his own need.

In addition to the constitutional doubts as to the justification for compulsory commitment when the purpose is curative only, there is also the question of the propriety of such commitments under the present hospital conditions. If the theory of curative commitment is constitutionally valid, the argument goes, its validity must further depend on whether or not the committed persons receive whatever care and treatment modern medicine has at its disposal. But present mental hospital facilities and staffs are incapable of furnishing adequate services to the more serious cases requiring hospitalization because of protective considerations. What justification is there for broadening the commitment policy to permit compulsory commitment for curative purposes when it is known that no treatment would be forthcoming?

Procedures for Compulsory Treatment

Although the term "compulsory commitment" would appear to imply actual compulsion, it must be stressed that this is not always the case. In actuality, all the cases in which the request for hospitalization does not originate with the patient are considered as involuntary commitments.[31] Involuntary commitment will, therefore, signify that there was a lack of volition on the part of the committed patient, but it will not necessarily imply that the patient was actively opposing the attempt to hospitalize him. The term thus encompasses the passive and nonvoluntary entry as well as the one which must be accomplished against the will of the patient and despite his resistance. This fact must be kept in mind in evaluating the commitment procedures to determine the adequacy of the protection they provide. The traditional symbols of due process, such as notice and hearing, would obviously have a different meaning and value for the lucid patient actively opposing his commitment than for the passive patient who is not fully aware of what is happening.

Commitment procedures until a century ago were highly informal, both here and in England. In fact some of the early procedural requirements were designed not so much to prevent the improper commitment of unwilling, innocent people as to keep out paupers who were only too willing to seek admission to these publicly supported institutions.[32]

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31 Federal Security Agency, A Draft Act Governing Hospitalization of the Mentally Ill, § 5 at 22 (Public Health Service Pub. No. 51, 1952).

32 Royal Commission on the Law Relating to Mental Illness and Mental Deficiency, Report 68 (1957).

Once mental institutions became more prevalent and the number of admissions increased, more elaborate procedural protections became a necessity. The new safeguards were primarily for the protection of the patient, but they also acted to protect the institutional officials against charges of malfeasance and wrongful detention by ex-patients.[33] The developments in commitment legislation during the last century have, therefore, tended for the most part to emphasize the formalities and technicalities of "due process," including notice, hearing, right to counsel and a jury trial. Only in recent years has this trend towards formalism been reversed, and many of the new statutes now exhibit a considerable departure from past legal formalities.

Due to the fact that commitment procedures are a matter for state legislation, the development of these procedures has followed devious paths throughout the country. Occasionally the states have copied the commitment procedures of each other, and in recent years the provisions of the Draft Act for the Hospitalization of the Mentally Ill (proposed a few years back as a model for state adoption by the Federal Security Agency) have been used as a basis for the law in some six states.[34] But generally the unifying influences have been few and the commitment procedures have varied widely in the several states. These procedures range from those requiring a full-dress judicial hearing and determination to those that eliminate the judicial determination altogether, permitting it on appeal only. Some states may have several of these different procedures at their disposal.

In spite of the great amount of variation, the procedures for compulsory hospitalization may be divided into three major patterns, the distinguishing feature being the agency that has final responsibility for the determination of the need for commitment and the making of the commitment order.[35] Some thirty-four states require a hearing before a judge and the issuance of an order by him before commitment may be effectuated. In about half of these states the law specifically provides for a jury trial, which may be had on the demand of the patient or at the discretion of the judge. Although not departing from the requirement of a hearing, seven other states provide that such hearing be before a special non-judicial tribunal consisting of legal and medical experts as well as lay representatives. In fifteen

33 Deutsch, *op. cit. supra* note 10, at 423.

34 National Institute of Mental Health, Federal Security Agency, A Draft Act Governing Hospitalization of the Mentally Ill (Public Health Service Pub. No. 51, 1952).

35 The following analyses of the commitment procedures are derived from American Bar Foundation, The Mentally Disabled and the Law (A Draft Report of the Project on the Rights of the Mentally Ill) (1958).

states, however, commitment may be effected without a prior hearing before an independent tribunal. These states require merely that an application for commitment be prepared by a relative or a public official, that it be accompanied by a medical certificate, and that these be submitted to the hospital authorities at the time the patient is presented. On the basis of these documents the mental institution may hold the patient indeterminately. The patient will, however, be accorded a hearing subsequent to his commitment if he specifically requests it.

Although there is no typical commitment procedure, there are certain procedural elements which are present in the majority of the commitment laws. Even the more recent procedural innovations which permit commitment without a hearing have adopted the preliminary steps required in the more formal commitment procedures. The general pattern of the commitment procedure can be described as follows: proceedings are usually set in motion by a sworn petition of relatives, friends, certain officials or any citizen. A certificate by one or more physicians stating that the person is mentally ill and in need of commitment must accompany the petition. In the states permitting commitment without a preliminary hearing the procedure is terminated here, and the alleged mentally ill person may be admitted into the institution. In the other states the person sought to be committed must be notified of the proceedings and usually is required to be present at a hearing. In many states the court or the special tribunal appoints physicians to examine the alleged patient. This examination is usually very informal and is held before the final hearing. In many states the person may ask that his case be heard by a jury. Following the hearing the judge or the commission is required to make a formal order of commitment if the evidence is found to require such action.[36]

Some of the procedural elements mentioned above are present in all commitment laws; others, though common in the past, are now on their way out. Many of these elements have been continuously challenged as "last-ditch stands of archaic legal prerogatives."[37] It is essential that a critical present-day evaluation be undertaken to determine the need and feasibility of reform.

"Due Process" Guarantees of Individual Rights

To enact the new Mental Health Bill the British Parliament had but one prerequisite: a majority of votes. Once the necessary third reading of the bill was over, its provisions went into effect, unchallenge-

[36] Guttmacher & Weihofen, Psychiatry and the Law 291 (1952).

[37] Kansas Legislative Council, Psychiatric Facilities in Kansas 5 (Publication No. 143, November 1946).

able by either the judiciary or the executive. But the adoption of reforms in American mental illness laws requires not only public and legislative support but also conformity with long recognized constitutional standards of "due process." True, the original sources for such standards as "due process" and "the law of the land" are in the ancient and basic documents of English history, but these appear unenforceable in their mother country while their judicial interpretation and enforcement have become a living art in their adopted country.

It is in the Magna Carta that, on May 10, 1215, the term "law of the land" originated. This treaty between King John and the enraged upper classes was designed to guarantee that "no freemen shall be taken and imprisoned or disseized or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers and by the law of the land."[38]

Since the Magna Carta was merely a personal treaty rather than a statute, it required reaffirmation each time a new monarch ascended to the throne. Consequently, it became the custom for each successive king to reaffirm the previous charters at each political crisis.[39] It was in connection with one of these confirmations that the phrase "due process of law" first came into being. This occurred in 1354 during the reign of Edward III,[40] when the King promised in the "Statute of Westminister of the Liberties of London" that "no man of what estate or condition that he be, shall be put out of Land or Tenement, nor taken, nor imprisoned, nor disinherited, nor put to Death, without being brought to Answer by due process of the Law."[41]

The context in which this new phrase is found is strikingly similar to that in which the "law of the land" appears in the Magna Carta. The natural inference that the phrases "law of the land" and "due process of law" were intended to be synonymous is given additional weight by a direct reference to that effect in another statute issued by the same king nine years later. Some have suggested that originally the phrase "law of the land" may have referred to substantive rights, while "due process" possibly referred merely to procedure.[42] But such distinction was not generally accepted, and the two terms have been recognized as interchangeable in American law.[43]

The concept of "due process" came to America with the first

[38] Barrington, Magna Carta 239 (1900).

[39] Mott, Due Process of Law 4 (1926).

[40] 1 Statutes of the Realm 345.

[41] Statute of 28 Edward III.

[42] Guthrie, Magna Carta and Other Essays 21 (1916).

[43] Twining v. New Jersey, 211 U.S. 78 (1908); Murray v. Hoboken Land and Improvement Company, 18 How. (U.S.) 272 (1855); Greene v. Briggs, 1 Curtis (U.S.) 311 (1852).

settlers. In the earliest of the colonization charters the "rights of Englishmen" in England were given to the colonists.[44] The early colonists, although not trained lawyers and often somewhat hazy on legal matters, were nevertheless concerned with individual rights, and many of their first documents of government incorporated references to "due process."[45]

In the declarations of rights drawn up by the colonists in the war constitutions, considerable attention was given to the listing of individual liberties. But it was only in the fifth amendment to the federal constitution in 1791 that the first use was made of the phrase "due process of law" in an American constitution. As first adopted, the federal constitution contained no article guaranteeing the citizens of the new union the rights of "due process of law," and this produced numerous objections to the document. Indeed, seven of the notifying states proposed amendments covering this defect.[46] To meet this objection the First Congress passed in 1789 twelve proposals for amendment and of these ten were properly ratified by the end of 1791.

To aid in the evaluation of this protection, reference should also be made to the context of the provision. It should be noted that the article in which it appears deals generally with the subject of criminal procedure and that the "due process" provision, which guarantees that no person shall "be deprived of life, liberty, or property without due process of law," comes immediately after the protections against double jeopardy and forced self-incrimination.

Despite the efforts by the proponents of federal power to give it a broader interpretation, the fifth amendment was limited in its applicability, by judicial interpretation, to the federal government. Consequently, it was supplemented after the Civil War with the fourteenth amendment, which was designed to protect the loyal citizens in the southern states as well as the recently freed men against state rather than federal abuse. The fourteenth amendment, ratified in 1868, is much less criminally oriented and provides in part that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process

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[44] The Patents of Elizabeth to Gilbert and Raleigh. Hazeltine, "Influence of Magna Carta on American Development," in Malden, Magna Carta, Commemoration Essays 187 (1917).

[45] One of the first official acts of the Colony at Plymouth, in 1621, declared that "justice should be impartially and promptly administered with trial by jury, and that no person should suffer in life, limb, liberty, good name, or estate, but by due process of law." Stevens, the Sources of the Constitution 208 (1894).

[46] Beard, American Government and Politics 63 (1906).

of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Since the adoption of the fourteenth amendment, "due process" protections also became an indispensable part of the state constitutions. While before the adoption of the fifth amendment, only eight of the thirteen states had an equivalent of a "due process" clause, every one of the new constitutions framed since the close of the Civil War contains this phrase.[47] Thus, even if the fourteenth amendment were now repealed, but a small portion of the people of the United States would be without this protection against state and federal tyranny. The chief value of the fourteenth amendment remains, however, in the fact that by giving the federal courts jurisdiction it insures a more uniform interpretation of these constitutional guarantees.

Now, what exactly does the "due process" protection require, and how does this relate to the new trends in compulsory hospitalization laws? For an answer we must go into the court cases and legal commentaries that have dealt with this topic over the years. Here one discovers a great divergence between English and American law. In England the protections of the Magna Carta have been used primarily to curb abuses of the executive and judicial branches. Originating as a protection against a lawless monarchy, "due process" never quite gained enough strength to impose its standards upon the legislative power. Several attempts were made in this direction. Sir Edward Coke, in particular, had strived to establish the principle of judicial control over Parliament. The Levellers had placed the basic constitutional rights far above ordinary statutes. Cromwell is said to have had somewhat similar ideas.[48] Likewise, Lock's discussions of the limitations on the legislative process were certainly contrary to the idea of judicial impotence.[49]

Yet, the main trend was away from the acceptance of judicial review. If there remained any question as to the limits of the legislative power, Blackstone, who came in 1765, through his commentaries and great influence set for all times the principle that Parliament was omnipotent.[50] Thus, in practicality the overriding authority of the Magna Carta became a matter of legislative self-restraint rather than judicial review.

Different was the story in America. Quite early it was argued and established here that the application of "due process" was not limited to the administration of the penal code but extended equally

[47] Mott, Due Process of Law 20 (1928).

[48] Gooch, History of English Constitutional Ideas in the Seventeenth Century 184 (1898).

[49] 2 Lock, Two Treatises of Government, § 142 (1884).

[50] 1 Blackstone, Commentaries on the Laws of England 91 (1884).

to private civil suits. In an old Maryland case involving the ownership of land—these being some of the most bitterly fought cases at that time—one of the ablest of colonial lawyers, Daniel Dulany, successfully argued that due process required notice and hearing before land claims could be settled.[51]

Even prior to that the principle had been recognized that the protections of the Magna Carta were intended not only against administrative and judicial abuse, but against legislative tyranny as well. During the middle of the 17th century, a series of acts was enacted in Virginia which ran the whole way from an incidental regulation of the practice of law to the absolute prohibition of the profession. When the most drastic of these acts was sent to the governor for his approval, he returned it with the comment that he would agree to it insofar as it was "agreeable to Magna Carta."[52] This appears to be the first instance on record in which an exercise of the police power in the colonies was questioned as being contrary to the "law of the land."

Yet the tremendous power inherent in the constitutional protections of individual rights was not generally recognized for a long time. In fact the first constitutional drafters believed that such guarantees were intended merely as limitations on royal power and meant little under a representative government. But once enacted, the "due process" requirements of the fifth and fourteenth amendments, as well as those of the state constitutions, turned out to be sleeping giants. At first, some legal authorities took the position that this guarantee was designed only to protect the criminal from arbitrary prosecution and imprisonment. This soon changed, and by the time Cooley published his *Constitutional Limitations* in 1868, the country was preparing to admit that "due process" imposed limitations upon all branches of government and required, furthermore, that they all cooperate to secure to the individual the basic legal protections required by the settled maxims of the law.[53] At the turn of the century, "due process" was well recognized, not merely as a protection against procedural abuse but as an effective limitation against improper legislative extension of the police power. Ever since, "due process" protections have been increasingly resorted to in both state and federal courts.

It may be well to survey briefly the general procedural scope of "due process," as interpreted by the courts, before we undertake to determine what requirements it imposes on the substance and pro-

[51] Lessee v. Beale, 1 H. & McH. (Md.) 67 (1726).

[52] Mott, *op. cit. supra* note 47, at 114.

[53] Cooley, Constitutional Limitations 505 (1890).

cedures of compulsory commitment. Although in the beginning there was considerable thought, which was endorsed by Supreme Court dicta, that "due process" secured a trial by jury,[54] this view was soon modified. The paring down of the broad original dicta to meet numerous situations in which a jury trial was an unnecessary hardship has been a continuing process ever since.[55] About the middle of the last century it was recognized that if the determination is not criminal in nature, a jury trial was not a constitutional requisite.[56] This principle was held applicable over the years in the cases of arrest and confinement of diseased persons, paupers, inebriates and delinquent children.[57]

Subsequently, it was thought that if a jury trial was not essential, a regular trial before some judicial body was a constitutional necessity.[58] This test of "due process" did not prove completely satisfactory either. It soon became evident that there were certain kinds of decisions which could not properly be made by a regular judicial body. Consequently, the courts, after searching through the history of common law decisions, concluded that "due process" is not necessarily "judicial process."[59] Then the courts developed the doctrine of notice and hearing as essential prerequisites of legal propriety. This doctrine, that substantial rights could not be impaired without an opportunity being given to the defendant to present his case, was adopted by the United States Supreme Court and became generally accepted as a procedural necessity.[60] But even this criterion was later found to be too strict for universal application. Over the years exceptions to the rule were upheld in tax assessment cases, where general notice and a hearing at some stage of the proceeding were considered sufficient, and in a great number of other quasi-judicial and quasi-legislative determinations.[61]

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54 Bank of Columbia v. Okeley, 4 Wheat. (U.S.) 235, 244 (1918); Greene v. Briggs, 1 Curt. (U.S.) 311 (1852).

55 White v. Kendrick, 1 Brev. (S. Car.) 469 (1805).

56 *Ex parte* Wall, 107 U.S. (1882).

57 *In re* Sharp, 15 Idaho 120, 96 Pac. 563 (1908); Nott's Case, 11 Me. 208 (1834); Cooper v. Schultz, 32 How. Pr. (N.Y.) 107 (1866).

58 See argument of Mason, counsel for plaintiff, in Dartmouth College v. Woodward, 65 N.H. 473 (1817); Newland v. March, 19 Ill. 376 (1857); White v. White, 5 Bab. (N.Y.) 474 (1849); Huber v. Reily, 53 Pa. 112 (1866).

59 United States v. JuTay, 198 U.S. 253 (1905); Reetz v. Michigan, 188 U.S. 505 (1903).

60 Pearson v. Yewdall, 95 U.S. 294 (1877); Simon v. Craft, 182 U.S. 427 (1901); Twining v. New Jersey, 211 U.S. 78 (1908); McGregor v. Hogan, 263 U.S. 234 (1924).

61 Parley v. North Carolina, 249 U.S. 510 (1919); Zakonaite v. Wolf, 226 U.S. 272 (1912); Reeves v. Ainsworth, 219 U.S. 296 (1911); Lawton v. Steele, 152 U.S. 135 (1894); Atty. Gen. v. Pelletier, 240 Mass. 264, 134 N.E. 407 (1922); Kreuger v. Colville, 49 Wash. 295, 95 Pac. 81 (1908).

Searching for a flexible standard of "due process" that would be applicable in all cases, the courts subsequently produced yet another formula. This one defined "due process" as conformity to the procedures existing in the English common law before the revolution.[62] If the common law was to be the test by which statutes were to be judged, the courts could easily determine the legality of new legislation by the simple expedient of looking backward to the usage in England prior to independence and judging the validity of all procedures by this yardstick. But this common law test tended to force upon courts the colonial procedural form "like a straight jacket."[63] Looking for a means of procedural reform without a drastic departure from the past, the constitutional scholars, led by Judge Cooley, developed the notion that the requirement of adherence to common law had reference to the principles of the common law, not its specific form.[64] Consequently, a new line of judicial thought developed regarding procedural guarantees. The key-note of the new attitude was struck in 1884 in the case of *Hurtado v. California*,[65] in which the court declared that an indictment by a grand jury was not a constitutional necessity if the accused is given substantially the same protection as was accorded him by the old common law method.

Hurtado opened the way for a new approach. The concept of "due process" that developed in the years that followed was sufficiently flexible to meet a great variety of changing needs for which the old mechanisms were no longer adequate. With the increasing role of federal and state government in regulating the nation's moral, social and economic life and the emergence of numerous quasi-judicial and quasi-administrative bodies, the courts were beginning to look to the inherent elements of justice in any determination of rights, rather than to the form of the proceeding.[66] The newer attitude of the United States Supreme Court toward the meaning and requirements of "due process" can be summarized by the words of Justice Roberts, speaking for the majority in *Betts v. Brady*.[67] In his opinion he clearly explains that the due process of law clause of the fourteenth amendment

> . . . formulates a concept less rigid and more fluid than envisaged in the other specific and particular provisions of the Bill of Rights.

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62 Murray v. Hoboken Land & Improvement Co., 18 How. (U.S.) 272 at 280 (1855); Dartmouth College v. Woodward, 4 Wheat. (U.S.) 518 at 667 (1819).

63 Twining v. New Jersey, 211 U.S. 78 (1908).

64 Cooley, *op. cit. supra* note 53, at 434.

65 110 U.S. 516 (1884).

66 Mott, *op. cit. supra* note 47, at 216.

67 316 U.S. 455 (1942).

> Its application is less a matter of rule. Asserted denial is to be tested by an appraisal of the totality of the facts in a given case.[68]

A few years later Justice Burton gave even fuller recognition to the fundamental fairness requirement of due process, rather than the insistence of any set formula. Speaking in *Bute v. Illinois*,[69] Justice Burton said:

> This *due* process is not an equivalent for the process of the federal courts or for the process of any particular state. It has reference rather to a standard of process that may cover many varieties of processes that are expressive of differing combinations of historical or modern, local or other judicial standards, provided they do not conflict with the 'fundamental principles of liberty and justice which lie at the base of our civil and political institutions.'[70]

"Due Process" and Commitment Reform

The criticism of the present structure and operation of the compulsory hospitalization laws can be summarized in four major objections: (1) that the commitment procedures resemble criminal proceedings and have an unfortunate traumatic effect upon the patient; (2) that the taint of criminality that attaches to commitment is partially responsible for the adverse public attitude toward mental illness, its treatment and needs; (3) that the medical question of hospitalization is improperly delegated to judicial officers who are either not sufficiently informed or else too busy to discharge this function appropriately; and (4) that present admission procedures are cumbersome and discourage speedy and early treatment.

To eliminate these objections one of two lines of reform may be undertaken. The first, patterned along the features of the new English Mental Health Bill, would make admission completely informal, would do away with most procedural prerequisites for commitment, and would eliminate the need for a prior judicial or administrative determination. The commitment authority in this case would be fully delegated to the admitting medical specialists. A less drastic reform formula, which would still answer most present criticisms, has been devised by several American states and has its best expression in the draft act prepared several years ago by the Federal Security Agency.[71] This formula modifies markedly the trappings of the commitment procedures, such as notice and presence, yet does not

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[68] *Id.* at 462.

[69] 333 U.S. 640, 649 (1948).

[70] For a complete analysis of the recent judicial trend in the interpretation of due process see Wood, Due Process of Law (1951).

[71] National Institute of Mental Health, Federal Security Agency, A Draft Act Governing Hospitalization of the Mentally Ill (Public Health Service Pub. No. 51, 1952).

totally abolish the independent pre-hospitalization hearing. How extensive a reform will our constitutional guarantees permit?

Whether or not the giving of notice to the alleged mentally ill person of the proceedings initiated for his commitment is a constitutional requisite has never been fully determined.[72] In about one-third of the states providing for judicial commitment, no provision is made by statute for notice to the patient. Most of the other statutes make notice mandatory. In practice the great majority of states require that the patient be notified. A few states provide that notice is to be dispensed with if it is asserted that it will be injurious to the patient's medical condition, in which case substituted notice will suffice. Sixteen states, furthermore, require that notice of the proceedings are to be given to the relatives of the ill person and four require notice to the guardian. The statutes do not usually specify how much time before the hearing such notice is to be given; but the value of notice is almost completely lost if twenty-four hour notice is to be considered sufficient, which is the case in some states.

Numerous psychiatrists have decried the traumatic effect of personal notice on a person who is mentally ill.[73] Legal papers, they say, only produce anxiety and confusion in a sick mind. Such notice, it is further said, is not only medically harmful but often also completely useless in protecting the rights of the individual. These arguments have received the support of some leading legal writers who feel that ". . . where the person is mentally incapable of understanding the nature of the proceeding or of preparing therefore, or is so deranged that notice would do him harm, the purpose of protecting his interest can be more effectively accomplished in some other way than by serving him with legal papers."[74]

In answer to the humanitarian plea for the abolishing of notice, it has been said that the traumatic effect of such notice could not possibly be any worse than the trauma produced when one suddenly finds himself detained in a mental institution without any prior notification. Answering the argument that such notice would be ineffective, it has been asked how we could pre-judge the alleged ill person before the hearing and decide that he is too deranged to benefit by it. Said the Kansas Court:

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[72] Porter v. Ritch, 70 Conn. 235, 39 Atl. 169 (1898); Olsen v. MacFeely, 202 Ga. 146, 42 S.E.2d 366 (1947); Georgia National Bank v. Liberty National Bank, 180 Ga. 4, 177 S.E. 803 (1934); Maxwell v. Maxwell, 189 Ia. 7, 177 N.W. 541 (1902); *Re* Masters, 216 Minn. 553, 13 N.W.2d 487 (1944); Brayman v. Grant, 130 App. Div. 242, 114 N.Y. Supp. 336 (1909).

[73] Group for the Advancement of Psychiatry Report, Commitment Procedure 2 (No. 4, April 4, 1949).

[74] Guttmacher & Weihofen, *op. cit. supra* note 36, at 295.

> It will not do to say that it is useless to serve notice upon an insane person; that it would avail nothing because of his inability to take advantage of it. His sanity is the very thing to be tried.[75]

Although the question of notice has never been fully resolved, it is highly questionable whether notice could be abolished altogether without affecting the validity of the commitment procedures.[76] On the other hand, the practice of substituted notice, to the patient's family or guardian, has been used in this country since the beginning of the nineteenth century, and many of the writers feel that its provisions are constitutional.[77] But it is possibly only in cases where it is established to the satisfaction of the court that personal notice will be improper or dangerous to the alleged patient that substituted notice would satisfy the requirements of "due process."

Since the legislative extension, last century, of the "due process" requirements to commitment, it has been recognized that the alleged mentally ill person is entitled to a hearing and is required to be present at it.[78] But there has been much opposition to these practices recently from both medical and non-medical circles. It has been claimed that

> . . . the enforcement of this "right" may do more harm than good. In many cases of mental illness . . . the patient is already suffering from the feeling that people dislike him and from delusions of persecution. Requiring him to sit in a courtroom and listen to his trusted physician and his nearest and dearest relatives testify to the facts regarding his mental condition is likely to confirm his worst suspicions. The result may be dangerous to them as well as injurious to him.[79]

In general the same arguments have been made against the requirement of a hearing as are made against notice.

Admission to mental hospitals, it has been frequently urged, should resemble the informal admission procedure of general hospitals. The psychiatric profession and others believe that admission is primarily a medical question and that an emphasis on judicial requisites, such as notice, a formal hearing and the presence of the person to be committed, is likely to produce traumatic and harmful experiences for the patients. The most satisfactory commitment law, say they, is one that changes the criminally-tainted judicial commitment pro-

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[75] *In re* Welman, 3 Kan. App. 100, 103, 45 Pac. 276 (1896).

[76] Curran, *op. cit. supra* note 21, at 281.

[77] Comment, 36 Ill. L. Rev. 747 (1942); Comment, 47 Nw. U.L. Rev. 100 (1952); 50 Yale L.J. 1178, 1194 (1947).

[78] *In re* Lambert, 134 Cal. 626, 66 Pac. 851 (1901); Appeal of Sleeper, 147 Me. 302, 84 A.2d 115 (1952); *Ex parte* Allen, 82 Vt. 365, 73 Atl. 1078 (1909).

[79] Guttmacher & Weihofen, *op. cit. supra* note 36, at 298.

ceeding into an administrative function, performed more speedily and effectively by qualified medical experts. Commitments without a prior hearing have consequently spread in many states.

Recently there has been increasing legal and popular opposition to such summary commitments. "Any person, before he is committed to a mental hospital, or otherwise deprived of his liberty," say the opponents, "should be served with notice and given a full opportunity to be heard."[80] It has also been emphasized recently that the decision as to compulsory commitment is not a medical decision but essentially a social one. Therefore, it must be based on a social criterion, with medical experts giving evidence but with the decision being made by a judicial officer as "a representative of society deputed for the purpose."[81] If no judicial hearing is provided for, we are warned, commitment will be based on an exclusively medical criterion and will be subject to no social check whatsoever. Considerable weight was added recently to the movement against summary commitments by a decision of the Missouri supreme court than an involuntary patient may be held without a hearing only during an emergency.[82] However, if an emergency does not exist or the hospitalization extends beyond the emergency, a hearing becomes a constitutional requisite.

Whether or not insistence on the traditional formalities of "due process" is the most effective method for the protection of those charged with mental illness is a difficult question. Possibly this is an area where new and unorthodox methods provide better protection than hurried, though legally correct, judicial hearing. It is uncertain how much of a departure from traditional "due process" would be allowed under our legal system, but many interesting proposals for change have been made. It has been argued, for example, that observational detention, which would permit a careful diagnosis of the patient, should always precede regular indeterminate commitment. Likewise, the suggestions have been made that the cases of committed patients should be automatically reviewed at regular intervals; that a central state agency should be made responsible for the review of all new commitments to guarantee conformity with the law; that regular inspections should be undertaken of mental institutions; and that legal counsel be provided to all patients who seek it.

In drafting the blueprints for reform, the call is frequently made

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80 72 Reports of the American Bar Association 295 (1947).

81 National Council for Civil Liberties, Submissions to the Minister of Health on Recommendations of the Royal Commission on the Law Relating to Mental Illness and Mental Deficiency 5 (1957).

82 Missouri *ex rel.* Fuller v. Mullinas, 364 Mo. 858, 269 S.W.2d 72 (1954).

for a system ". . . containing more of the elements of a scientific determination, with as little resort to adversary process as possible."[83] Such an arrangement would require that decisions on commitment be made by administrative experts and be based upon impartial investigations of the individual and his surroundings. The most effective procedural safeguard, supposedly, would not be notice and presence of the person being confined but a requirement that the investigation be exhaustive, searching out all relevant facts, and that those making the investigation be properly qualified. This is a plea for the rule of experts, rather than judges, which has been heard recently in other legal fields and which will have to be answered generally and beyond the mere boundaries of the commitment law.

CONCLUSION

The recent trends for the reformation of the nation's mental institutions and their transformation from custodial storehouses to therapeutic centers requires parallel modifications in the applicable laws. In undertaking to reform the law, careful attention must be given to the fundamental requirements of the constitutional guarantees of individual rights. "Due process" of law, required by the fifth and fourteenth amendments to the federal constitution as well as by most state constitutions, provides protection not merely against procedural impropriety but also against substantative abuse through the unreasonable extension of the police power.

Most of the recent court cases and legal commentaries which have dealt with the propriety of the new legislative enactments in this area have usually concerned themselves with the procedural rather than the substantative phases of the reform. Yet possibly it is the latter that proposes the most serious infringement upon the "due process" protection. It is highly questionable whether compulsory treatment can be properly extended to unwilling mental patients who remain rational and who do not pose a "clear" and "present" danger to social order and safety. Although the need of early treatment, before the patient becomes a source of danger, is recognized, such treatment should be accomplished through the encouragement of voluntary hospitalization rather than through compulsory process.

The constitutional requirements of "due process" should not pose serious difficulties for the adoption of the needed procedural reform of the mental treatment laws. Admission to mental institutions in England and in America throughout the colonial period was extremely informal. If conformity with "due process" is to be deter-

[83] Note, "Three Controversial Aspects of New Illinois Mental Health Legislation," 47 Nw. U.L. Rev. 100 (1952-53).

mined by the procedures that existed under the common law, then the existing procedural complex is certainly superfluous. Most of the present, stringent requirements, originating in the Sixties and Seventies of the last century, are the products of an overzealous campaign against abuses, both fancied and real. But the present transformation and opening-up of mental institutions will provide the patient better protection. The best protection for the patient's rights is now afforded not so much through insistence on legal formalities as through the changing character of institutional care.

At the same time, the recent history of commitment cases indicates that our courts may be unwilling to do away altogether with the right to an independent hearing before a patient is committed for an indeterminate period. Thus, while a reform completely abolishing the pre-commitment hearing, as undertaken in Britain, is unlikely in this country, less extreme modifications are possible. Mental treatment laws are motivated by a social philosophy totally different from that which produces the criminal law in that they seek to benefit the individual rather than punish him. Consequently, a more liberal attitude toward procedural protections would be in order in the case of the commitment laws. It would appear that the historical flexibility of the concept of "due process," as well as the recent emphasis upon substantial justice rather than procedural dogmatism, should permit the adoption of less rigid legal procedures that will continue to protect individual liberties while making admission to institutions less cumbersome and less traumatic. Under such new procedures it would be well to concern ourselves less with the procedural niceties of the commitment process and devote more attention to the protection of patient rights after admission—to the end that they receive early treatment, that their cases be constantly reviewed and that they be speedily discharged.