

Book Review: Detention of the Mentally Disordered, by Barry B. Swadron

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Detention of the Mentally Disordered. By BARRY B. SWADRON. Toronto: Butterworths (1964). pp. 470. (\$15.00)

It has been said that a man should not be deprived of his liberty unless he has been given a fair hearing in accordance with the principles of fundamental justice, but all across Canada hundreds of unfortunates are locked up every month without a hearing, never having seen a lawyer, much less a judge. Even if they were given an opportunity to see a lawyer, it is probable that he would not know where to go to find the information required to help such clients. These are

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persons who have been detained as mentally disordered. Mr. Swadron has investigated their dilemma with great insight.

There have been many works written on the various incapacities of the mentally disabled. This is the first book, however, in which are outlined the various methods by which those who suffer from mental incapacities are incarcerated. For this reason Mr. Swadron's book is an important work for those who have an interest in the criminal trial process, in civil rights, and, indeed, in the integrity of law itself. It is important that all magistrates, judges and criminal barristers understand the information contained in this book since it is they, through the judicial function of the court, who in many cases determine whether a person will be imprisoned in a mental institution. It is even more important that doctors and psychiatrists recognize the rights and duties assigned to them by the various Provincial Mental Health Acts which authorize them to take action to restrain the mentally disordered. In this context, Mr. Swadron points to the case of a young man who killed his mother and himself after having been examined by a doctor who would have certified him, but thought that he was required to obtain the mother's consent before he could do so.

This book is divided into two main parts. The first part considers the admission, detention and release of those who are neither charged with, nor convicted of, a criminal offence. The second part considers the admission, detention and release of those who have become involved with the criminal law. Very little has been written in this field, and, accordingly, most of this book is original research. It is mainly a comparison of the various legislative enactments in Canada and Great Britain, with reference to the United States Draft Code where applicable.

Few people realize how varied the legislative enactments are in the field of mental health across our country and how few legal safeguards are afforded in the majority of the provinces. One comes to the conclusion that this is an area where uniform legislation would be valuable. Mr. Swadron presents model sections which, he believes, would overcome the weaknesses in some parts of present legislation.

Mr. Swadron's basic premise is that depriving the inmate of a mental hospital of his freedom is contrary to our fundamental legal principles unless accompanied by sufficient safeguards. It is against this background that the author discusses the problems involved in certification of the non-criminal. In Ontario the medical practitioner is given tremendous powers, but doctors often disagree on the required elements for certification in borderline cases. In many provinces there is no procedure for a general review of each patient's case at any stated time after committal and there is no appeal from the decision of the certifying physicians or from that of the hospital superintendent who has refused to release a patient. The courts will

not often take jurisdiction to determine the rights of people who are in mental hospitals, since it is generally considered that the medical certificates are a good answer to a writ of habeas corpus.

In the second part of the book, dealing with the insanity problem when an element of crime is involved, Mr. Swadron discusses the various methods by which a person may reach a mental hospital other than through voluntary admission or certification. At the same time he investigates the issues of fitness to stand trial and criminal responsibility. He points out that the test of criminal responsibility in Canada is not the M'Naghten Rule. Our test is fully discussed as are the consequences of the verdict "acquitted on account of insanity". He does not investigate the question of whether or not our test is the most satisfactory, for, as he points out, the question is all but spent. The final chapter deals with the inmate of a penal institution who becomes mentally disabled while under sentence and who requires aid that would be impractical to administer in the penal institution.

Unfortunately no answers can be given to some of the questions that Mr. Swadron raises, but it is to be hoped that when he finishes his present research work with the Study Project on Mental Health Legislation for the Province of Ontario, he will be able to present us with some recommendations for the solution of many of the problems in this important field. It is hoped that we will see more of Mr. Swadron's recommendations in the near future and that publication of this work will be the cause of a more enlightened attitude on the part of the various authorities towards the problems involved in the detention of the mentally disordered.

One serious problem not treated by this book, is the difficulty and frustration experienced by doctors and lawyers in discussing mental disorder in relation to law. The difficulty has its roots in the fact that they are speaking different languages, are seeking the solutions to different problems, and believe different facts to be significant. To a large extent this can only be overcome by a union of the medical and legal definitions of insanity. It would be of service, however, if a book were written containing, for the benefit of lawyers, a definition of the various types of mental disorder with the symptoms and usual medical treatment of each. It might also include a discussion of criminal responsibility in terms to which a doctor could attach some consequence. Such a book would go far towards obviating the difficulties which doctors and lawyers presently find in dealing with each other, and would be a valuable sequel to Mr. Swadron's present book.

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