

Cruelty in the old people's ward

The author of this article, C. H. Rolph, commenting on an eye-witness account of conditions in a geriatric ward, says 'it is a catalogue of cruelty, callousness, filth and depersonalisation'. He believes the aged mental patient is badly in need of a real court of protection.

'There shall continue,' says section 100 of the Mental Health Act, 1959, 'to be an office of the Supreme Court called the Court of Protection.' Parliament was recognising and perpetuating something that had been going on since the days of Simon de Montfort, a King's Court that had been administering the 'affairs' of people deemed mentally incapable of looking after their own. It had always conformed, and still does, to the hallowed pattern of English law by seeing a man's 'affairs' and his bank balance as his real property, not his physical or emotional needs or the comfort of his body or even his expectation of life.

I think we need a court of protection that can really protect the defenceless invalid against physical discomfort, emotional exploitation and deprivation, indifference, exasperation and neglect. Such a court would soon find itself protecting a legion of old people who were not mentally ill but were being treated as if they were (and were thus rapidly qualifying). That is something we need even more.

Since I wrote a recent *New Statesman* article about the plight of the aged in geriatric wards, I have been getting a steady flow of letters about the functioning of this strange little corner of the Lord Chancellor's department which, according to some case-weary solicitors, is called the Court of Protection because it is not a court and protects no one.

It seems to me fair to say not only that it *does* safeguard at least the property of its wealthier protégés (which might otherwise be grabbed and reluctantly shared out by the patients' loved ones), but also that it has the powers of the High Court in relation to the punishment of 'contempt'.

These powers, now made statutory in section 110(2) of the Mental Health Act 1959, include the right to commit you to prison if you refuse to produce documents it wants to see, or to go before it when summoned, or to answer its letters of enquiry. Several of my recent informants, having (as 'nearest relatives') invoked the aid and guidance of the Court of Protection, have soon repented and wished it further. Why? They went to it because the Post Office Savings Bank, and other banks and trustees, had told them that

without the Court's authority they would release no funds from the patients' accounts for maintenance, rent arrears or other expenses. (In fact, a Court of Protection circular, No. 23/60, warns all such trustees that they might 'incur considerable risk' if they did; which is precisely the language of menacing uncertainty that engenders acute caution among the money-changers.)

Waft of feudalism

Quite right too, you may say. But the 'nearest relative', disenchanted and wishing the Court had never been asked to help, then begins to receive letters from it asking for more information and sending forms to be filled in. (One of these brings a significant waft of feudalism into the correspondence by calling itself a 'Certificate of Kindred and Fortune'; the last one I saw concerned a fortune of £48 16s. 5d.)

Disappointed that the Court of Protection seems not to trust them and to be making needless difficulties, people tend to ignore all this and 'wait to see what happens'. And then there creeps into the Court's letters, with the gentlest of *crescendi*, the note of long-term official confidence, whose ultimate sanction is the prison at Brixton or Holloway, according to sex. (The Court itself inhabits, in the most deprecating way, a building in Store Street, London, that was once a prison.)

You cannot, in short, although you may wish it further, shake off the Court of Protection once you have kindled its interest. Probably your best course is to put it all into the hands of a solicitor, but undoubtedly your worst is to go on ignoring the Court's letters and hope that it will forget you. It won't.

It charges a fee for services, sought or unsought; and among the sadly informed minority who know anything about it at all there is a growing feeling that it shouldn't. The fee is based on the patient's net income. Under £100, 1½ per cent., £100 to £150, 4 per cent, over £150, 5 per cent. It can forgo its fee in a case of hardship, but in the cases of hardship known to me it didn't.

'Tax on lunacy'

It makes no great income by this 'tax on lunacy', as it has been called. In 1963 the yield was £215,000 from 26,000 cases, an average of only £8 a time. But there are many cases in which, for that £8, all it does is to stamp and post two *pro forma* letters. In a case quoted in the House of Commons last year by Mr. Geoffrey Howe, M.P., an estate of £7,000 was milked of £350 for 'approving the issue of a surtax certificate, checking the accounts of a retiring receiver' (i.e. the person it appoints to handle the money and 'affairs') 'and appointing a new one'. Even by Hollywood standards this is good pay.

And even so, though its salary bill of £35,000 leaves £180,000 of fee-income still to spend, the Court loses money. Whatever the loss may be, the taxpayer makes it good, wondering (if he knows anything about it)



A geriatric ward

Photo: John Brooke

what the £180,000 goes on. With this figure you could give a 25 per cent rise to everyone in the Public Trustee's Office for taking all this work over, and pass it to them. Then, at least, you could please yourself whether you invoked their help or not.

Then, too, there might be 'protection' for the geriatric patients in ordinary or non-mental hospitals. And it might even extend beyond a mere concern about their savings bank accounts to the alleviation of their physical and emotional sufferings—which, in some hospitals, are simply unspeakable. It is of these that I wish to write.

It is the mere notion of a 'Court of Protection' (and what it *could* do with further statutory powers) which, measured against the realities, shows how unprotected are these thousands of old people in the geriatric wards. Let me offer, from among the many letters reaching me since the *New Statesman* article, this extract from an account by a state registered nurse in the Midlands:

'I have nursed for the last seven years in a well-known geriatric hospital here. It has a growing reputation, largely due to self-advertisement, for the humanitarian and "new approach" conditions under which the aged patients live. The actual treatment of these helpless old men and women is such that I have taken out an expensive insurance policy in order that I may never find myself a patient there.

With the help of another nurse, who feels as I

do, I have made a detailed list of the things from which our "confused" old patients suffer most. If you are interested I should like to send you a copy of this. I think you would hardly believe how much roughness, laziness and dirt can go on unchecked in these days.'

I asked her to send it. I almost wish I hadn't. Selecting my words with responsible concern, I say that it is a catalogue of cruelty, callousness, filth and de-personalisation such as I have not read since I was reviewing the reports of the Nuremberg trials—and such as I thought never to read again. I have independent evidence about this nurse's reliability as an observer. I can only suppose that those old people must be longing to die. What in God's name are we all doing, to inflict this on old men and women once dear to those among us?

This nurse has offered her list of atrocities to her Matron, to the Hospital Administrator (twice), and to the local Press. She tells me that they all reject it. I suppose it would upset too many people, and keeping it from the relatives is all part of the service offered. You have to be considerate where you can, and where it will be noticed.

The process of de-personalisation, hastened of course by the removal of spectacles, teeth and hearing aids, must be a boon to a harassed and overwhelmed hospital staff, with no time to bestow as much attention on their charges as a farmer gives to his pigs.

But if it is solely or mainly a staffing problem, if

people have stopped wanting to be nurses as they have stopped wanting to be clerks, artisans, policemen, dockers, teachers, parsons, then the problem is a circular one—the understaffing is the cause of the understaffing.

Complaint about all this, by anyone to anyone, is therefore futile. So is the concern, genuine and contrite enough in most cases, of the hospital management committees and the regional hospital boards. So is the question-to-the-Minister in the House of Commons—you can write your own answer in advance and get it right. So, when he arrives, will be the Ombudsman—he won't even be allowed to consider hospital matters at all.

Surely the law can help? Its concern for the liberty of the subject has always been limitless. Why doesn't someone sue for damages and get things moving at long last? Hospital management committees are liable in tort (National Health Service Act, 1946), and accordingly for wrongs committed in their hospitals, whatever the reason, whatever the excuse or mitigation. So, therefore, are regional hospital boards and, by extension, the Minister of Health.

But you don't catch the Civil Service like that, now that the citizen can actually sue the Crown and its ministers. Although the law empowers him to do so, the Minister never tells hospitals what to do. He only hopes.

Look, for example, at Hospitals Memorandum (65)71, about the standardisation of medical records:

'The Minister hopes that authorities will, wherever possible, bring the main recommendations into operation by 1st April 1966, and that those unable to do so will bring them into operation as soon as practicable thereafter and in any event not later than 31st March 1968.'

Puzzle: find what's compulsory. Does 'hopes' mean 'directs'? (Some hospitals think it does when it appears on a 'pink circular', because a pink-un is understood to require a report back on the action taken. Others suppose that the pink just means that the Minister is hoping with extra fervour.) And which are the 'main recommendations'? No prizes offered. The H.M.C. and the R.H.B. are out on their own, though they could be joint defendants.

Perhaps our real court of protection is not, after all, the Court of Protection; perhaps it is the good old Queen's Bench Division of the High Court. The stone that will start the avalanche there, the historic source of so many social avalanches, may lie in the hands of one of the many, the too many, voluntary societies and movements concerned with the care of the elderly.

But the time may not be far distant when the only persons interested will all be too old to throw it.

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