The Norton Manning Report

Henry Parkes was so impressed with Norton Manning's administration of the Tarban Creek Asylum, that he proposed to Manning that he should undertake a comparative study of asylum systems in the United Kingdom, the Continent and the United States. This was in consonance with Parkes' liberal concept as a Chartist, providing him with the opportunity to build, in NSW, a system for the care of the insane, which would replace the uncoordinated system of independent asylums. Norton Manning was overseas for a period of some fifteen months during which he assiduously carried out his task, and recorded his observations and recommendations in his voluminous report to the Colonial Secretary in 1868.

The magnitude of his task can be gauged by the instructions to him from the Chief Secretary as briefing for his study tour(56):

> "You will visit the chief asylums in the United Kingdom, on the Continent, and in the United States. You will direct your inquiries in these visits to the principles on which the building have been erected... the different methods of treatment... the working of different systems of management and discipline... the efficient supervision and economy of expenditure ...you will obtain copies of all regulations dietary scales and reports... of all recent and important status, state papers and departmental reports relating to the treatment of lunatics."

In its sections the report follows closely the terms of his briefing although not always in the same order. It became the 'magna charta' of the care of the insane on which was based the system of organisation of lunatic asylums, standards of care, legal procedures and even architectural details of institutions.

Norton Manning's proposals for the legal safeguards and procedures of lunacy were incorporated into the *Lunacy Act of 1879* (42 Vic. No. 7) including his concept of an official Office of a professional inspector, the Inspector General of the Insane, who would have executive and legal capacity over the asylums of the State. Not all his recommendations were acceptable. He did propose a form of statutory authority to control lunacy and its institutions. I imagine this would have been anathema to Parkes, who detested any form of power at the public service level which would gloss the authority of Parliament and its Ministers. Paradoxically he did not object to Norton Manning occupying the authoritative position of Inspector General of the Insane. But then Manning was a public servant whom he could and did trust not to overstep the boundaries of his authority. Again the organisation was constructed as a sub-unit of the Chief Secretary's Department, in itself a secondary form of restraint over the individual.

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Essentially Norton Manning proposed that all asylums should be incorporated into one organisation under the executive control of the Inspector General of the Insane. The asylums would be classified by function with separate institutions, or separated sections within institutions for acute and chronic patients, idiots, and the criminally insane. Within this system asylums would be decentralised to rural and outer suburban areas close to the populations they served. The system would be served by staff from a career service with professional and sub-professional training programmes, and subject to a uniformity of policy extending to the areas of treatment and sustenance. It would be supported by defined legal procedures for admission and committal, care of the persons' assets, and the right of the patient after committal. Apart from the continuing supervision by the Inspector General of the Insane and his reports, a further audit in support of the patient and his rights was envisaged by a system of external visitors, who had substantial legal obligations and powers under the *Lunacy Act*.

Norton Manning became the First Inspector General of the Insane, and the organisation of which he was the professional executive head was variously referred to as the Lunacy Department or the Office of the Inspector General of the Insane. The latter was most frequently used by Manning and had a curious origin. When Norton Manning relinquished his super-intendentship of Tarban Creek Asylum in 1879, he continued to occupy office space at that institution. He believed firmly that the head of a lunacy system should not be identified with any particular hospital. To differentiate his mail from that of Tarban Creek his letterheads were printed Office of the Inspector General of the Insane. From this origin it became the accepted title for the government organisation of lunacy although the civil service title was the Department of Lunacy. Correspondingly when the position of Director-General of Public Health was created in 1913, within the Chief Secretary's Department, the organisation he directed became known as the Office of the Director-General of Public Health. These two curious descriptive titles continued to be used until 1941, when both sub-departments were removed from the authority of the Chief Secretary to become the nucleus of a separate Department of Public Health under a Minister of Health.

There is no doubt that within the structure of the civil service, Norton Manning was a permanent head in charge of the Department of Lunacy, which itself was a sub-department of the Chief Secretary's Department. He reported to the Colonial Secretary through the Principal Under Secretary of that Department, although it appears that he did have right of direct access in professional matters.

During his administration asylums were established at Callan Park, Orange, Goulburn and Newcastle; admission procedures were defined; and the Reception House at Darlinghurst established for observation after preliminary certification; and special provision was made, legally and physically, for the care of the criminally insane.

In the latter half of the nineteenth century the reputation of the asylums was high. Treatment was directed along physical lines of adequate diet, exercise and controlled vocational (mainly farming) therapy. Recruitment of staff was buoyant and quality was high, certainly with medical staff. The medical profession itself recognised the therapeutic potential of the asylums, and opted out of private psychiatric care. There was but one private asylum, and it was in part contracted to the Government. The Office of the Inspector General of the Insane dominated the remanent of the Medical Department in its public and professional image, as well as its status within the Chief Secretary's Department and the civil service. Competition between the two services was again to emerge in the 1890s after the establishment of the Board of Health – competition and disputation which persisted, often bitterly, until the establishment of the Health Commission in 1973.

Lunacy procedures and laws

The Governor's Authority was dominant as the legal basis of lunacy until the *Lunacy Act of 1878*. In the early years of the Colony it was applied directly and procedures were simple and devised extemporaneously as circumstances dictated. After the establishment of the Supreme Court in 1823, the Governor's Authority in lunacy was delegated to the Chancery Division of the Court, paralleling the delegation of the Royal Prerogative by the Monarch to the Lord Chancellor of Great Britain. After 1823 lunacy procedures were more consistent and were confirmed in local legislation in the provisions of the *Dangerous Lunatics Act of 1843* and the *Lunacy Act of 1878.*

The Governor's Authority

The Governor's Authority was that of a military autocracy, the Governor having almost absolute powers until 1825. The rule 'quod gubernatori placet, legis habet vigorem' was applied vigorously. The law in Great Britain was translated to NSW and was unaffected by local statutes until the establishment of the first Legislative Council. This Council did provide a mechanism for the development of legislation pertinent and applicable to the Colony and its needs.

Governor Phillip was entrusted in his commission with the same delegation from King George III over the custody of lunatics and idiots as was held by the Lord Chancellor. The emphasis was on custodial confinement and restraint as much to conserve the harmony of society as to protect the individual lunatic. The details are set out in Phillip's second commission(57):

"And whereas it belongeth to us in right of our Royal Prerogative to have the custody of ideots and their estates and to take the profits thereof to our own use finding them necessaries and also to provide for the custody of lunaticks and their estates without taking the profits there of to our own use.

And whereas while such ideots and lunaticks and their estates remain under our immediate care great trouble and charges may arise to such as shall have occasion to resort unto us for directions respecting such ideots and lunaticks and their estates Wee have thought fit to entrust you with the care and commitment of the custody of the said ideots and lunaticks and their estates and Wee do by these presents give and grant unto you full power and authority without expecting any further special warrant from us from time to time to give order and warrant for the preparing of grants of the custodies of such ideots and lunaticks and their estates as are or shall be found by inquisitions thereof to be taken by the Judges of our Court of Civil Jurisdiction and thereupon to make and pass grants and commitments under our Great Seal of our said territory of the custodies of all and every such ideots and lunaticks and their estates to such person or persons suitors in that behalf as according to the rules of law and the use and practice in those and the like cases you shall judge meet for that trust the said grants and commitments to be made in such manner and form or as nearly as may be as hath been heretofore used and accustomed in making the same under the Great Seal of Great Britain and to contain such apt and convenient covenants provisions and agreements on the parts of the committees and grantees to be performed and such security to be by them given as shall be requisite and needful."

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The authority vested in the Governor by his commission added considerable weight to his prerogative powers, including those in lunacy, which devolved upon him as Vice-Roy. Until the 1820s there was no doubt of the Governor's personal control over all activities and all persons in the Colony.

The legal administration of lunacy being a direct responsibility of the Crown, was not appropriately vested in the early Civil Court under the Judge Advocate, but was a direct responsibility of the Governor. He could delegate the adjudication of lunacy cases to a civil judicial tribunal and could, as the Governors regularly did, consult the Judge-Advocate on legal procedures. In this manner the techniques of administration of lunacy were devised, which were improvised to meet particular circumstances.

The first mechanism of lunacy administration was devised from the need to secure and administer the estate of a free settler, Charles Bishop, who was deemed to be insane(58). To meet this contingency, Governor King in 1805 issued a provisional order for committal consequent upon a jury 'to make enquiry upon view of examination of Charles Bishop, to say on their oaths whether the said Charles Bishop is a Lunatick'. The inquest confirmed his incapacity, and he was committed to the custody of John McArthur and the Reverend Samuel Marsden (they being volunteers from motives of humanity). The same persons were authorised to administer Bishop's estate. Presumably, Bishop was maintained in custody in his own domestic establishment. Portion of the English procedure was here adopted, the Governor dispensing with the process of a writ 'de lunatico inquirendo' which would hardly have been applicable in the circumstances.

In 1810 a board of three surgeons substituted for a jury in the case of Alexander Bodie, and advised that he was labouring under such serious mental derangement as to justify the Governor to appoint committees of his estate(59). This was probably a spontaneous decision by the Governor, although it did not replace the jury system as Bostock suggests. A jury was used again in 1812 in the case of Jonathan Burke McHugh on the advice of Judge Advocate Bent, preceded prior to the assembly of the jury by the issue of a commission from the Governor in the nature of a writ 'de lunatico inguirendo'(60). It was

the forerunner of a technique used frequently afterwards for admission of private patients to the asylum, and even for the discharge of some as in the case of Surgeon Daniel MacDonnell and John Duncan in 1825, then the only two private patients in the asylum. By this device Governor Thomas Brisbane was able to justify his action to repatriate both to England at Government expense.

The disposal of convict or pauper lunatics during this period is not defined in the official documents. For the former presumably it was merely a matter of the Governor's discretion and custody in the goal or hospital, depending on the danger to the community by the actions of the lunatic or the circumstances under which the deviation became obvious. For the latter a similar procedure may have applied, one hopes with preference to the hospital rather than the goal. Suffice to say that, until the establishment of Tarban Creek the inmates of the asylums were almost totally convicts, who, as such, were already in legal custody. Their admission was merely a process of transfer from a place of indenture, the convict barracks, the hospitals or gaols. It appears that a statement of opinion of insanity from a Colonial Surgeon was adequate or a magistrate's order. The right of admission rested with the Superintendent of the asylum. The medical staff had no discretion which would modify the Superintendent's authority. Mr Major West, one of the medical staff servicing the asylum, was quite emphatic on this point:

> "I never knew an instance in which the Surgeons at Castle Hill have decided on the sanity or insanity of persons sent there(61)."

It does appear that the medical staff did have a discretion in routine discharges for convict and pauper patients. Bostock quotes Major West again relating the case of three men who were sent back to the asylum after he had discharged them as sane(62).

Summary jurisdiction

Committal by Justices of the Peace or Magistrates was an accepted procedure in lunacy during the whole of the period until the *Lunacy Act of 1878*. Presumably such persons were brought before the Justices for disturbing the peace, wandering at large or for vagrancy. Probably also, and especially in country areas, asylum tickets were issued by Justices or Magistrates without the formality of charge or committal. Commissioner Bigge commented critically on the Rev. Samuel Marsden and John McArthur for such a misuse of their magisterial office. Magistrates' committal orders to the asylum were often brief and terse with the offence indicated as 'insane'.

Even after the passage of the *Dangerous Lunatics Act in 1843* the powers of summary jurisdiction were often misused, especially in country areas, for local convenience to avoid admissions to the asylum. Norton Manning speaks of the abuse of this system(63):

> "...under the old statute (*Dangerous Lunatics Act of 1843*) it was common practice especially in distant country places for Justices before whom an insane patient was brought to call on him to enter into recognizances to keep the peace or to be imprisoned in default for five or even six months as a wandering lunatic, a vagrant ... and to leave to the keeper of the prison to take action as regards the insanity either in the course of or at the expiry of this sentence."

By this device the gaols were used as reception houses for doubtful cases or patients with acute episodes.

The Supreme Court

Reference has already been made to Section XVIII of the Supreme Court Charter of 1823 (4 George IV c 96) which translated to the Jurisdiction of that Court the King's Prerogative in Chancery, and authorised the Court to appoint guardians and keepers of the persons and estates of idiots and lunatics who are unable to govern themselves or their estates. Previously the delegation had been to the Governor of the Colony in his commission.

Section XVIII limited the jurisdiction of the Supreme Court to this component of lunacy and the appointment of guardians and keepers was not for the purpose of securing the person but rather his estate. It did not detract in substance from the authority of the Governor over the disposal of idiots and lunatics.

This Section is in two parts, the first of which likewise gives to the Supreme Court a similar authorisation to infants and their estates 'according to the order and course observed in that part of our United Kingdom called England'. The provision for idiots and lunatics is quite discrete and does not impose the same qualification to follow English order and procedure, but gave the Supreme Court discretion to 'inquire, hear and determine, by inspection of the person, or such other ways and means by which the truth may be best discovered or known'.

The Supreme Court was thus empowered to develop its own procedures, and was absolved from the obligation to observe existing English practice. However, there is no doubt that it did continue to exercise this function through English tradition and practice. The process of writ 'de lunatico inquirendo' with jury verdict was used in the first recorded, and probably the first actual case in 1828 under this jurisdiction of the Supreme Court. A record is contained in the *Sydney Gazette* in May of that year:

> "A commission of lunacy, the first, we believe that has been held in the Colony, was summoned at the Court house, on Wednesday last, to inquire into the fact of mental imbecility alleged against Mr James Birnie of Sydney and to decide on the propriety of committing the management of his affairs for the benefit of his family, to other hands ... The verdict of the jury was, that Mr James Birnie was of unsound mind, and incapable of managing his own affairs."

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The process of inquiry de lunatico inquirendo undoubtedly continued until the passage of the *Lunacy Act of 1878* (42 Vic. No. 7), which substituted a new mode of enquiry by petition to the Court, and created the Office of Master in Lunacy to manage the estates of insane persons, in lieu of personal trustees appointed by the Court.

The jurisdiction of the Supreme Court, although theoretically available to all, was in practice limited to those whose assets could ensure payment of the Court fees and other expenses. As the Judges of the Court personally collected and retained such fees the probability of a case from an impecunious litigant being listed was somewhat remote.

The Dangerous Lunatics Act, 1843 (7 Vic. No. 14)

The process of admission to the asylum by single certification, often per se, or as a corollary to a process of summary jurisdiction or an order from the Governor or Colonial Secretary persisted until 1843. In that year a Captain Hyndman successfully sued Joseph Digby claiming that he was illegally confined in the Tarban Creek Asylum. The ground for the verdict 'was a belief (founded on the evidence) that due caution and care had not been exercised to ascertain the state of the plaintiff's mind'. This incident accelerated the passage of the first lunacy law of Australia through the Legislative Council.

The *Dangerous Lunatics Act of 1843* was 'an Act to make provision for the safe custody of and prevention of offences by persons dangerously insane and for the care and maintenance of persons of unsound mind'.

The Act laid down the procedures for committal of the criminally insane or dangerous lunatics to gaols and hospitals and the protection of their interests while so detained. It further provided the mechanism whereby the Governor could direct convicted criminals who became insane, insane persons committed for trial, or persons acquitted on the grounds of insanity to a lunatic asylum. Other provisions of the Act provided for Official Visitors to the asylum; indemnity of staff against action for acts already performed in the confinement of patients in Tarban Creek at the time of the passage of the Act; the method for the certification of persons not dangerously insane, and the authority for maintenance of persons in the asylum either from the funds of the Colony or from their estates.

The significance of this Act is that it provided for a system of double medical certification as part of the legal processes involved in the committal of both the dangerously insane and the not dangerously insane. In the latter, applications for confinement to the asylum could be made by relatives or guardians, and the applications were sanctioned in writing by a Judge of the Supreme Court on the basis of supporting certificates from two legally qualified medical practitioners. The principle of dual certification in lunacy remained in force in NSW until the *Mental Health Act of 1958.*

The *Dangerous Lunatics Act* was amended in 1845 (9 Vic. No. 4) 1846 (9 Vic. No. 34) and 1849 (13 Vic. No. 3). The amendment of 1845 was significant in the administration of lunacy as it gave power through a legal process for discharge from the asylum by a mechanism other than petition to the Governor. It provided for a Judge of the Supreme Court to examine the cause of any person where there is a petition or reason to believe that the person is of sound mind. The amendments of 1846 and 1849 were minor and specified the qualifications of medical practitioners who could provide certificates under the Act; established the mechanism of discharge to custody of friends; and invested the Superintendent of Port Phillip and the Resident Judge at Port Phillip with the same powers as exercised by the Governor and Judges of the Supreme Court of NSW.

Insanity and criminality

The *Dangerous Lunatics Act of 1843* (7 Vic. No. 14) provided for the removal to an asylum of prisoners or persons committed for trial and certified to be insane or idiotic by two medical practitioners. It also defined the procedure for the exercise of the Governor's Pleasure for persons found not guilty of offences on the grounds of insanity (Section IV):

> "And be it enacted, that in all cases where it shall be given in evidence, upon the trial of any person charged with any treason, murder, felony, or misdemeanor, that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of committing such offence, the court, before whom such trial shall be had, shall order such person to be kept in strict custody, in such goal or place of confinement, and in such manner as to the court shall seem fit, until the Governor's pleasure shall be known; and it shall thereupon be lawful for the Governor to give such order for the safe custody of such person, during his pleasure, in such place and in such manner as to the Governor shall seem fit."

The *Act for the Custody and Care of Criminal Lunatics 1861* (24 Vic. No. 19) provided for the proclamation of an asylum or other suitable place, as suitable for the care and custody of criminal lunatics.

Reception houses

The *Act to Amend the Law for the Care and Treatment of the Insane 1868* (31 Vic. No. 19) gave capacity for the Governor, on the advice of the Executive Council, by proclamation to appoint houses and premises for the reception and temporary treatment of persons committed under the *Dangerous Lunatics Act*. It provided for admission procedures, records, medical visitation and Official Visitors for the reception house.

The Lunacy Act 1878 (42 Vic. No. 7)

The *Lunacy Act of 1878* was a consolidation of the two existing Acts of the Colony, the *Dangerous Lunatics Act of 1868* (31 Vic. No. 19) and the *Act to Provide for Custody and Care of Criminal Lunatics of 1861* (24 Vic. No. 19), plus elaboration on the processes of committal, discharge and supervision of the affairs and estates of insane persons. Norton Manning was the influential person behind the drafting of the Act, and many of its provisions relate to his comparative study of lunacy laws during his study tour. One such was the concept of an Inspector General of the Insane with oversight over all the lunatic asylums of the State, including their standards of treatment and care.

The Act is exhaustive and divided into a number of parts dealing separately with procedures of restraint and certification; proclamation of hospitals for the insane, government and private, and the methods of regulation of these hospital by the central administration; reception houses for the protection of patients; proclamation of hospitals for the criminally insane; the appointment and duties of the Inspector General of the Insane; appointment and responsibility of Official Visitors; discharge procedures and safeguards for persons committed to mental hospitals and asylums, and supervision of estates by order of the Supreme Court or the jurisdiction of the Master in Lunacy.

The dual certification system was retained but the procedures of arrest and detention were more explicit than those in the *Dangerous Lunatics Act of 1868*. A limit of 28 days was placed upon the period of observation after committal by the Justices, after which the patient was discharged, or alternatively retained in an asylum by certification from the Medical Superintendent or an appropriate medical officer, that the person was still a lunatic who would be dangerous or incapable if released.

The whole tenor of the Act implies uniformity of procedures, and control from a central administration over all lunatic asylums or reception houses, or licensed houses, whether private or governmental. The Colonial Secretary replaces the Governor as the authoritative person in the Act on whom authority delved, other than the authority of the Supreme Court which was overriding when exercised. The agent of supervision was the Inspector General of Lunacy who was charged with periodic visits of inspection, notations in special Registers, and reporting annually to the Colonial Secretary. His administrative function was further broadened as the immediate advisor to the Colonial Secretary on standards and approval of all plans for new lunatic asylum buildings or renovations.

The era closed with the administration of lunacy on a secure and stable footing within a central organisation, directed by a professional man of vigor, capacity and vision.

This Act put the imprimatur on an asylum system subject to central direction and authority. So was established the Lunacy Department of the Chief Secretary's Department, with Norton Manning as its head, using the powers invested in him as Inspector General of the Insane to administer the lunatic asylums of NSW.

The era closed with the administration of lunacy on a secure and stable footing within a central organisation, directed by a professional man of vigor, capacity and vision. The lunatic asylums were recognised by the medical professions as the centres for psychiatric treatment, and their doctors were the specialist psychiatrists of the times.

The first settlement in Australia was dependent entirely on Government for its support and control. It was an impoverished Colony, barely viable economically, beset with its own struggles for survival, and bereft of the usual community restraints and standards. Hardship, and with hardship, abandonment and want were commonplace and of minor interest to Government, whose meagre resources were totally occupied with the immediate problem of consolidation of the Colony. The capacity of the medical service and the convict hospitals were fully extended, and barely capable of coping with the demands made upon them by convicts and others, whose welfare was the absolute responsibility of Government. A restrictive policy was adopted which denied the needs of those who were free or freed. This was of less social significance when the proportion of this group to the whole was small. Towards the end of the second decade the need for an alternative to cater for settlers, emancipists, freed-convicts and native-born population became acute as this proportion increased rapidly.

Poverty and destitution were rife. The lot of those whose only saleable asset was their personal labour was difficult enough. It was desperate when they were aged, infirm, widowed, or deserted, or in urgent need of medical and hospital treatment. The principle of self-help was the underlying basis of the philosophy of benevolence in Great Britain, and the official attitude was likewise in NSW. Systematic assistance to the sick, destitute and afflicted was left to voluntary private effort and not built-in to Government services. The possible exception was the are of orphans towards which, after 1810, assistance was provided from the Orphan Fund(64).

There was movement towards charitable assistance to the poor and destitute with the establishment of the Society for the Promotion of Christian Benevolence and Charity in 1813. This society was initiated by the journalist Edward Smith Hall, and the Memorial to Governor Macquarie was supported by a committee of citizens, comprising, in addition to Smith Hall, John Hosking, William Pascoe Cook, Jeremiah Campbell, Edward Edgar and John Ayre. Its objectives were to relieve the distressed of the Colony, to enforce the sacred duties of religion and virtue, and to support and supply missionaries to neighbouring islands. Public subscriptions were sought and the original list amounted to 25 only – an ominous portent of its future demise. Smith Hall was appointed secretary.

Governor Macquarie gave reluctant approval to the principles of the Society, meanwhile cautioning that the grand point 'was to do good at home(65)'. The proposal, however, aroused the spleen of the Reverend Samuel Marsden, who refused to be associated with it in forthright terms:

> "For as to the 1st object Relieving the Distressed and enforcing Piety – there are no beggars in the Colony – the sick are already provided in the Hospitals ...that as to enforcing Piety the chief good to be effected was among the rising generation in the schools ...and with regard to Missionaries they are already sufficiently provided for by the Missionary Society in London(66)."

Macquarie, influenced by, and one suspects somewhat relieved by Marsden's opposition which enabled him to retract from a hasty decision, immediately withdrew his imprimatur, but indicated, at the insistence of Smith Hall, that he would give 'only' his sufferance to the formation of the Society. And so was set in motion a movement which was to culminate in the formation of the Benevolent Society of NSW.

Public conscience, thus aroused, was extended during the next decade, to provide a non-Government medical service for the indigent sick with the formation of the Sydney Dispensary. And so, through the Benevolent Society and its asylums and the Sydney Dispensary (and later Infirmary), the needs of the Colony for charitable and medical benevolence were provided for until self-government.