

Original Articles.

MASSACHUSETTS LUNACY LAWS.¹

BY WALTER CHANNING, M.D.

THE subject of this paper may not seem a very appropriate one to introduce at one of our meetings; but it is one which has been on my mind for several years, and I shall not feel satisfied until I have done everything in my power to at least bring it forward for discussion.

We can hardly hope in this world to find laws which will satisfy every one, as they owe their origin to human weaknesses, which require guidance and control, and the subjects of these defects do not care particularly to be guided and led, because they are incapable of managing themselves. None the less society must be maintained by rules and regulations which will be found to produce the greatest amount of good to the greatest number of persons.

More than any persons requiring laws for their protection are the insane, who especially appeal to our sympathy as a class, helpless through no voluntary transgression of social restraints, but through disease, the result of the age in which we all live and form a part. We are responsible for this disease, we ourselves may at any time succumb to it, and be thrown on the tender mercies of these very laws. Let us keep this idea then constantly in mind, and in considering the question, see if we should be willing to personally subject ourselves to the restraint and control liable to be forced upon us against our will, diseased and weakened though it may be.

As a starting-point, I wish to give it as my opinion, that our own State laws on lunacy, and those of many other States, are founded on a mistaken theory, as to the nature of insanity. This theory had its origin in the crude ideas of many years ago which regarded insanity as a loss of moral control, resulting in the free and unchecked play of the most vicious elements of human nature. The natural treatment of an insane person was in consequence similar to that which would be adapted to a person of criminal instincts, who had committed no overt act, but would be liable to commit such an act if not forcibly held in restraint. It was justifiable to confine and securely bind persons who were dangerous to society if at large. The safety of society was the first consideration. The suffering of the individual was of little importance, especially as it was due to his own wicked disposition.

During the present century, starting at its beginning and continuing to the present time, constant progress has been made, the details of which are familiar to you all, in the knowledge of insanity, and the treatment of the insane. One of the most striking tendencies in this progress has been toward the full recognition of insanity as a disease, in the pure sense of the word, and not as a moral weakness. And this simple and scientific doctrine of disease has revolutionized the intelligent treatment of insanity, and made, or is making institutions for the insane, *hospitals* instead of *prisons*.

That the public, though constantly growing more enlightened, do not yet fully comprehend the disease explanation of insanity is illustrated by the frequent details of brutal treatment of the insane at their own

homes. The manner in which patients are carried to asylums is also another illustration of the same thing. Last year (1887) for instance, sixteen patients were carried to the State Asylum at Utica in restraint, which was immediately removed on admission. Sixteen patients was also admitted the same year into the State Asylum at Buffalo in restraint. Of these eleven wore hand-cuffs; three had in addition, shackles, one was brought in a muff, and one woman had her hands and feet tied with bandages. Almost any asylum could easily give deplorable details of the inhuman manner in which excited, but not dangerous patients have been treated before admission, and are brought to the institution.

But public opinion must be largely moulded by those having the direct care and treatment of the insane in their hands, and at the best can be expected to advance slowly and some distance behind its instructors.

The important and practical lesson we have been learning the last few years is — that the insane can be allowed a very large degree of liberty, and require little and probably no mechanical restraint while inmates of institutions. Unconsciously, almost, as to the influence at work to produce these results, we have rapidly increased the former and diminished the latter, until many of the tenets of ten years ago as to the asylum architecture, and management are already obsolete.

Ten years ago the rectilinear building, congregate treatment, and mechanical restraint were sacredly cherished, and strongly defended by nearly the entire body of American insane hospital authorities. Abroad they were striving after better things, and accomplishing them to some extent. In this country they were tabooed, or at least frowned upon and discountenanced.

Look at the transformation to-day! New York the head and front of conservatism in some directions in the care of the insane, not in all be it understood, is about to erect a new institution with twenty-two different buildings, many of them on the cottage plan, with congregate dining-rooms, diversified architecture, and every arrangement to carry the patient from a perfect hospital to a nearly ordinary dwelling-house.

The State Insane Asylum at Utica where for many years mechanical restraint was freely and openly applied and as openly advocated, has during the last year abolished restraint and given away the last "cribbed"!!

Certainly no more striking proofs of change and progress could be given than these.

During the ten years it will also be found that many small private institutions have been started, some of them being highly successful in every sense of the word. It is no accident that has given birth to these places. They come to fill a demand for greater freedom, more home-like surroundings, more privacy, more comfort than were formally to be found in large asylums. The improved condition of the insane required something more like the homes they had been accustomed to, and less institution-like, to fulfil the necessities of treatment.

With all these changes in the character of the insane and the consequent requirements of their treatment, it is well to examine our laws and see if the time has not arrived when they, too, may be revised with benefit. Are they not too narrow, too stringent, too inelastic? Is it necessary still to assume that the

¹ Read before the Boston Medico-Psychological Society, April 19, 1888.

managers of insane institutions are not to be trusted? Are committing physicians still to be held as corrupt and willing to aid in schemes to incarcerate insane persons in lunatic prisons? Are hospitals for the insane to be surrounded with so many safeguards, that the persons requiring their treatment must be frightened away? Is it not an outrage to make an insane hospital *difficult* of ingress? Should it not be made easy instead?

I cannot help feeling that the elaborate laws concerning insane hospitals help to keep alive the spirit of distrust at times more or less noticeable throughout the community. They constantly say to the public, "these institutions are dangerous places, they are full of temptations to lure the feeble, sick, and impoverished inside their gates, and when once within, to abuse and maltreat them."

It is always urged by the friends of these cast-iron laws, that the liberty of the person is sacred, and should only be controlled by law. This is true enough as long as the person is in his right mind, but once he loses his power of reason, he forfeits the right to use what he cannot be held to be responsible for. If he loses this controlling power by means of *disease*, no court can restore it to him. This, medical treatment alone can do. And medical knowledge only can determine when the power is lost, and when it is regained.

It is just here that the element of *trust* comes in. The sick and insane man must be absolutely *trusted* in the hands of the physician, and no court, or law must interfere to say where, or how he shall be treated, any more than if he has a fractured leg, or typhoid fever. The law may manage his property, and guard his interests, and keep any rights for him, or restore them to him, but his medical treatment it has no concern with.

We seek by our lunacy laws to do away with this element of trust, but after all they only divide the trust, or throw it into incompetent hands. Let us for a moment, for instance, consider the final order of commitment which sends the certified insane person to the asylum. This may be signed by "a judge of the supreme judicial court, or superior court, in any county where he may be, and a judge of a probate court, or of a police district, or municipal court." As we all know the majority of commitments are signed by judges of the probate court. "These judges shall see and examine the persons alleged to be insane, or state in their final order why it was not deemed necessary or advisable to do so."²

Now these judges often do not see the alleged insane persons; and it is not necessary for two reasons. (1) They can *trust* in the certifying physician, and (2) They know very little about insanity, and cannot be expected to judge what form of treatment the insane person may require.

The law should not have been optional, for it leaves a loop-hole open for the judge to shirk the responsibility, and further offers an opportunity for dishonest persons to so deceive the judge that he shall not deem a personal interview necessary. It is one of those laws that is more honored in its breach, than in its observance. As far as I can see there is nothing in this law which can prevent the possibility of a sane person being committed to an asylum, and the mistake would be a worse one if done with the approval of the judge, and harder to rectify.

² Sec. 34, Laws Massachusetts.

As a matter of fact I do not believe any respectable physician is guilty of conspiring to falsely restrain an insane person. It would be too dangerous, and risky, too easily found out, and apart from moral considerations, no man of ordinary sense would be tempted to do such a thing.

Consequently it is my opinion that as far as corrupt practice on the part of the physicians is concerned, the order of the judge could be dispensed with.

The procedure under the laws of New York for committing insane persons to insane institutions is more reasonable and practicable both from the point of view of the judge and the physician. These laws³ specify that "no person shall be committed . . . except upon the certificate of two physicians, under oath, setting forth the insanity of such person. But no person shall be held in confinement in any such asylum for more than five days, unless within that time such certificate be approved by a judge, or justice of a Court of Records . . . and such judge, or justice *may* institute inquiry, and take proof as to any alleged lunacy before approving, or disapproving of such certificate."

It will be noticed that the function of the judge is here simply that of approval that the medical certificate is properly executed according to law. The responsibility of deciding as to the *mental condition* of the lunatic is not thrown upon him. But he has the authority to make a judicial investigation if for any reason he may think it necessary. And certainly no one would wish to take away this power from him, as his hands are the proper ones to place it in.

Contrast the Massachusetts law which places on the judge's shoulders the responsibility of saying "that the person committed is insane, and is a fit person for treatment in an insane asylum. And said judge shall see and examine the person said to be insane, or state in his final order the reason why it was not deemed necessary or advisable to do so."⁴

Even the laws of Pennsylvania of 1883 are much more reasonable in regard to commitments, than are the Massachusetts laws. The section of the laws on this subject is as follows: "No person shall be received as a patient for treatment, or for detention into any house, or place where more than one insane persons are detained for compensation without a certificate signed by at least two physicians resident in this Commonwealth, who have been actually in the practice of medicine for at least five years; both of whom shall certify that they have examined separately the person alleged to be insane, and after such examination had do verily believe that the person is insane, and that the disease is of a character, which in their opinion, requires that the person should be placed in a hospital, or other establishment where the insane are detained for care, or treatment, and that they are not nearly related by blood, or marriage to the person alleged to be insane, nor in any way connected as a medical attendant, or otherwise, with the hospital, or other establishment, in which it is proposed to place such person. The certificate above provided for shall have been made within one week of the examination of the patient, and within two weeks of the time of the admission of the patient, and shall be duly sworn to, or affirmed before a judge or magistrate of this Commonwealth, and the county where such person has been

³ L. 1874, chap. 446, title 1, art. 1, sec. 1.

⁴ Section 12.

examined who shall certify to the genuineness of the signature, and to the standing and good reports of the signer."

The next section of the Massachusetts law,⁶ which provides for the physician's certificates is well enough as far as it goes, with one exception, and that is the absurd clause which specifies that neither of the certifying physicians shall be connected with any hospital, or other establishment for the treatment of the insane.

Nothing could be less necessary, or more unreasonable than this provision, and further than this, it works real injury to the lunatic, for he loses the services of asylum specialists who are certainly more competent to certify intelligently than most physicians as to his mental state.

The apparent animus of this law is to guard against the asylum physician certifying, and helping to commit a patient to an institution in which he may have an interest, but supposing he has an interest in one institution only, what possible reason can there be in preventing his signing certificates for other places? Both the English and New York and Pennsylvania laws adequately and properly cover this point. The laws of the latter State say:⁶ "It shall not be lawful for any physician to certify to the insanity of any person for the purpose of committing him to an asylum of which the said physician is either the superintendent, proprietor and officer, or a regular attendant therein."

Just this should be the law. When carried further and made to include every physician connected with a lunatic asylum, it is unjustifiable from every point of view.

The New York laws contain a very good provision in regard to the physician's qualifications which might be incorporated into our own laws with advantage. This is — that his qualifications shall be certified to by a judge of any court of record. Such a provision as this is a guaranty that as far as ordinary requirements and reputation go, the certifying physician is competent. It strengthens the hands of the physician, and gives more value and weight to his certificate.

The sections of our laws, numbers 26 and 27, which relate to emergency certificates, or commitments, have never seemed to me entirely satisfactory, as they either put into motion a good deal of cumbersome machinery, or are not strictly adhered to. Their object is to bring the alleged insane person under treatment within the shortest possible time, but if literally adhered to, the attainment of this object is under some circumstances extremely difficult, if not impossible. In the first place the applicant must answer the numerous list of questions given in section 15; the physicians' certificates must be *separately made* and signed, and in addition the application must be signed by one of the selectmen of the town, or the mayor, or one of the aldermen of the city in which the person to be committed resides.

It takes time to answer the questions, and a portion of them might be easily omitted, still they can usually be answered and perhaps the time required may not be ill-spent. There is certainly no need that the physicians' certificates shall be separately made and signed. If a provision is made that both physicians have examined the patient personally, one certificate with both signatures is sufficient.

The most troublesome feature of all is that providing for the signing of the application. In each individual instance, of course, the official specified should be found, and he should first investigate the case before signing his name. It is often, however, no easy matter so find any of these persons, at night, in midsummer and at other odd times, out of business hours. If the law is observed to its letter, nearly, if not quite as much time will be required to make out the emergency commitment as the ordinary commitment. There is a little more red tape about the latter, but where it is regularly and systematically tied up every day, the difference is insignificant.

Then, too, the emergency commitment requires a bond to the amount of one hundred dollars, to be given by the party committing the insane person. I must say I see no reason for this section of the law. The bond is to be given to the treasurer of the asylum, or hospital, which would lead one to suppose that it was to secure payment for the board of the insane person for the five days allowed by the emergency law. But I can see no more reason why a bond providing for payment of board should be necessary in the emergency case, which is for five days only, and in the exceptional case, than in the ordinary case. If there is any other or better reason for this bond, why should it be given to the treasurer of the hospital? Is it a guaranty of good faith? If so, it is a very unusual proceeding to make money the basis of such a guaranty. The other provisions of the law should make such a guaranty unnecessary. We may further question who is going to give the bond in the case of the ordinary pauper. The law says the "person committing." Who is the person committing? An application is to be *signed*, but the maker is not mentioned. Is the physician? Has he any right to make both the application, and the certificates? It may be held that the signer is the applicant. The next question is, shall the signer, be he mayor, alderman, or selectman, give the bond? If he does this, additional time will be required to consider this question.

I know now that physicians often go on this bond, but it is placing an unnecessary burden on them, and one not intended by the law.

The next section to be considered is that relating to *voluntary commitments*, a recent and important addition to our laws. A similar law is now in force in Scotland, and the Commissioners in Lunacy say of it in their last report for 1886: "Forty-nine voluntary patients were admitted into asylums," (the total number of registered lunatics being 11,025). "We have for some years been able to state that nothing has occurred to indicate any difficulty or disadvantage traceable to this class of patients in asylums; and we continue to be of opinion that this is a useful provision of the law which permits persons who desire to place themselves under care in an asylum to do so in a way which is not attended with troublesome forms, but which, nevertheless, affords sufficient guarantee against abuse."

I am glad to see this testimony in favor of the Scotch law, though the number of voluntary commitments is small. I have not at hand the Scotch law and do not know whether it is essentially like our own.

Perhaps evidence from our own hospitals and asylums would be somewhat similar. But the whole number of voluntary commitments is small, which may mean that the institutions do not generally favor

⁶ Section 13.
⁶ Section 2.

them, or that few persons among the public understand, or care to avail themselves of the law.

We find from the Report of the Board of Lunacy and Charity, for 1887, that during the six years the voluntary commitment act has been in operation, only two hundred and sixty persons have availed themselves of it, and most of these have gone to the McLean Asylum. During these six years the whole number of commitments from the general community was eighty-five hundred, and the number of voluntary commitments was scarcely four per cent. of the whole number. During the year 1887 there was less than fifty voluntary commitments, thirty of these being to the McLean Asylum. The balance was scattered about among the public lunatic hospitals. At Danvers there were but three voluntary commitments in 1887, which seems a very small number out of so large a total number of admissions, four hundred and forty-six in all. The deduction from this fact might seem to be that among the poorer classes in the community there are none, or nearly none of those persons "whose mental condition is not such as to render it legal to grant a certificate of insanity." Otherwise how can we explain the large number of voluntary admissions at the McLean Asylum, twenty-nine persons out of a total of seventy-four persons?

There is undoubtedly another explanation, which is something like this: The ignorance of the lower classes is always an obstacle in the way of early treatment, and the poverty of the middle classes, or those persons a grade above the lower classes, prevents them from seeking those surroundings which would be agreeable to them while still retaining their reason. Both of these classes, when once unable to care for themselves, must be sent away to those institutions provided to take them at the lowest cost. It is no longer a voluntary question with them, or their friends, but rather a necessity, and this settles the question of commitment.

With the upper classes the question is the exact opposite. They can be influenced at an earlier period in their disease to seek treatment and they further have the requisite means to pay for surroundings in keeping with those at home, to which they are willing to go, and their friends are willing to send them, at an early period.

I suppose the provision laid down in section 28 of the law is, however, rarely adhered to as to whether the mental condition of the alleged insane person is "not such as to render it legal to grant a certificate of insanity." If the person is undoubtedly insane, then the institution has no legal right to admit him, no matter how willing he may be to voluntarily commit himself, but as far as my observation goes, the admission has usually turned on the latter point. We all know that many insane persons are quite able to sign voluntary agreements, but no such person can be admitted under the law. If the mental condition of the person is obvious, then of course a certificate can be made out, and he must be committed in the ordinary manner.

The voluntary law from its language, is intended for the *sane* and not for the *insane*, and should not be used to commit the latter. Of what use otherwise are complicated lunacy laws, if persons deprived of the natural use of their ordinary reasoning and will power can shut themselves up in insane asylums under the pressure usually of their friends and relatives? And further, supposing the voluntary patient becomes vio-

lently insane, what is his legal status then in the asylum? If he entered the institution of his own accord, in a semi-insane condition, he certainly passes when violently insane into a perfectly defenseless condition, and could under no circumstances more need any protection the law may grant than at such a time. Is he still to be regarded as a voluntary inmate, able to leave after three day's notice? This is manifestly absurd, and leads to the inevitable conclusion that if the voluntary patient admitted sane, becomes insane, he should be regularly committed.

Section 29 provides for immediate notice to the Board of Lunacy and Charity of the voluntary admissions, and the Board is required to immediately investigate such cases. What this investigation may be, I do not know, but it should be made at once by a medical man capable of judging of the various degrees of mental disease, and the Board of Lunacy and Charity should from time to time make a special examination of the voluntary cases. In my opinion there should be some legal provision whereby the person desiring to enter an insane asylum voluntarily, may so commit himself independently of the asylum authorities. For instance, one or two physicians should certify to his mental disease partial or developed, and to the asylum being an appropriate place for his treatment. This certificate then to be approved by a judge of probate, or some other official.

As the insane asylum is primarily, and strictly should be for the insane alone, the sane should be excluded, rather than invited to seek its treatment, but cases of partially-developed disease for the time practically insane, should gain easy admittance. The certificates of one or more physicians need only certify to the facts, and to the desirability of treatment. The approval of a judge would be the only bit of red tape, which could be easily managed, and the voluntary cases would then be placed on record and have some legal standing.

The small private institutions are at present discriminated *against* so far as the voluntary law is concerned. The law says (sec. 26), "The superintendent, or keeper of any lunatic hospital, . . . may receive into his custody, etc." It has been held by the Board of Lunacy and Charity that the small private institutions were not included in the meaning of this law. Such may, or may not be the correct interpretation of the law, the Board has, at any rate, the power to enforce this interpretation, and we now find that no small places receive voluntary cases.

As they, more than any other institutions are especially adapted to receive just such cases, there is manifest injustice somewhere. If they are not properly organized and managed, they should be brought up to the requisite standard. If the law is not full enough to take them in, it should be enlarged.

There are probably defects in both these directions in consequence of the possibility of which the Board ruled against them. The remedy is to include them clearly in the law admitting voluntary cases, and then to provide for adequate supervision. The latter is both necessary and just, as they have no trustees, are proprietary, and are growing steadily in number.

Another unnecessary provision in our law is section 30, which provides that "Any physician who wilfully conspires with any person unlawfully, or improperly to commit to any lunatic hospital, or asylum . . . any person who is not insane, shall be punished by fine, or

imprisonment at the discretion of the court." This section may have been suggested by the English law, 16 and 17 Victoria, chap. 96, sec. 13, which says, "Any physician, surgeon or apothecary, who shall sign any certificate, or do any other act (not declared to be a misdemeanor), contrary to any of the provisions herein contained, shall for every offence forfeit a sum not exceeding twenty pounds."

It must be remembered that the history of institutions for lunatics in England is entirely unlike that in this country. The English laws have been made from time to time to meet the special requirements of the circumstances, and often stringent laws were at the time necessary.

With us the case is different. Our lunatic asylums are well-managed. The public has confidence in them, and is satisfied with them. The small private asylums are strictly medical in character, and up to the present time have received few patients.

We do not require stringent laws to regulate admissions, but rather the doors of lunatic asylums should be easily opened to encourage early treatment. Neither do we require elaborate laws regulating the care and treatment of the patients while in the asylum. The mismanagement and abuse formerly somewhat prevalent in the English proprietary asylums are hardly possible in this country.

What we do need, however, is careful *medical* supervision of our whole system of provision for the insane. Every year this need becomes more apparent and urgent. A *medical* commissioner in lunacy, of ability and experience, is the person to whom this work should be confided. No other person, however competent, would in my opinion, be able to satisfactorily supervise the details of work, which must never be allowed to lose its medical character.

In Massachusetts the institutions for the insane are so compact that they can be easily visited, and the details of a practical system could be put into operation somewhat after the manner of New York. But here the result would be of a very different character; for while no one man can efficiently supervise the system of provision for the insane covering such an immense territory as in New York, here, one man could do it thoroughly.

The theory under which the New York commissioner in lunacy acts is excellent, but he is expected to do the work of three men, as a consequence of which his work loses very much in value, and the theory is never carried into practice as far as it should be.

I have merely outlined a few of the defects of our Massachusetts lunacy-laws. There are others which might be referred to perhaps rather as *blemishes* than *defects*. Our laws are in many ways excellent, and have worked pretty well, partly, I fear, because they have not been strictly followed. They would have been less satisfactory if followed to the letter. The time is coming, however, when some revision of these laws will be necessary, both for the purpose of improving on those in existence, and adding on others to cover the need of medical supervision, the wisdom of which I think no one will question.

The time for this revision may not have arrived as yet; but thinking that it is not far off, I have prepared this paper for the purpose of introducing a discussion on the three following points:

(1) Do our Massachusetts lunacy laws need revising?

(2) Has the time arrived for this revision?

(3) Shall a committee of this Society be appointed to prepare a revision of the existing laws, and a draft of new laws establishing a medical State commissioner in lunacy, to serve as the basis of future legislation?

KATALYTIC ACTION OF ELECTRICITY; ITS PRACTICAL VALUE IN RHEUMATIC AFFECTIONS.

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It has been long recognized that the effect of the electrical current on animal tissues comprises something more than the stimulation of nerves and muscles. Remak first called attention to the alteration produced in living tissues by the passage of the galvanic current, and applied the name "katalytic" to this function. Experiment has shown also that fluids may be made to pass into the body by means of special electrodes adapted to the purpose, a property of the electrical current which has been termed its "kataphoric" action. Whether the latter is an element in the production of the katalytic action, or whether vaso-motor changes, improved nutrition by stimulation of the trophic mechanism, increased tissue-metamorphosis, osmosis, or molecular changes, each or all, are important factors, cannot as yet be accurately determined; the conditions are too complicated for satisfactory experiment and analysis. The practical bearing of the question lies in the fact that therapeutic experiment has demonstrated beyond a doubt that such changes may be produced in the tissues as to cause improvement and even recovery in certain disorders not yielding to other treatment. Prominent among these disorders are subacute changes in or about the joints, of rheumatic origin.

Erb¹ quotes the observations of Remak, Rosenthal, Meyer, Cahen, Cheron, Weisflog, Benedikt, Onimus, Legros and Erdmann, as well as citing his own personal experience, to illustrate the practical benefit of electricity as a therapeutic agent in various forms of arthritis, including acute and chronic rheumatic and traumatic affections. It appears proved that exudation and pain may be made to disappear, and the normal mobility of the joints restored, in cases where other remedies have failed. Rosenthal and Bernhardt² allude to the effects of the galvanic current on rheumatic affections of muscles and joints, choosing the subacute and monarticular joint affections as the most promising objects of experiment. They recommend especially the galvanic current, considering faradism also valuable as a counter-irritant, as well as faradization of neighboring muscles. They state that even in acute rheumatism the faradic current and the wire brush have been found to lessen pain and shorten the disease, but throw doubt on its supplanting salicylic acid and other remedies. They allude to the passage of galvanism or faradism as promoting absorption of joint exudation and lessening the pathological processes in the neighborhood of the joint (fasciæ, tendons, periosteum and muscles). Beard and Rockwell³

¹ Handbuch der Elektrotherapie. Leipzig, 1882, p. 251.

² Elektrizitätslehre für Mediziner und Elektrotherapie. Berlin, 1884, p. 439.

³ Practical Treatise on the Medical and Surgical uses of Electricity. New York, 1878, p. 541.