

**AN ANALYSIS OF MENTAL HEALTH CARE IN AUSTRALIA FROM A
SOCIAL JUSTICE AND HUMAN RIGHTS PERSPECTIVE, WITH
SPECIAL REFERENCE TO THE INFLUENCES OF ENGLAND
AND THE UNITED STATES OF AMERICA: 1800-2004**

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Thesis submitted in fulfillment of the requirements
for the degree of Doctor of Philosophy.

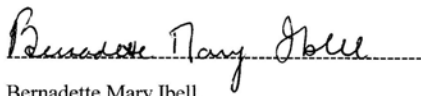
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STATEMENT OF AUTHORSHIP

The work presented in this thesis is to the best of my knowledge and belief original, except as acknowledged in the text. The material has not been submitted in whole or in part, for any academic award at this or any other tertiary educational institution.

A handwritten signature in cursive script, reading "Bernadette Mary Ibell", written over a horizontal dashed line.

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22 July 2004

ABSTRACT

The aim of this thesis is to analyze mental health care in Australia from a social justice and human rights perspective, in order to demonstrate that social justice as a philosophical manifestation of justice and fairness, is an essential ingredient in the theory and practice of mental health care. It is contended that the needs of the mentally ill would be most appropriately answered by the utilization of a Natural Law model, based on Finnis's Natural Law theory.

The Scope of the Thesis.

The needs and care of the mentally ill are discussed, together with the treatment meted out to these vulnerable members of society since, approximately, the year 1800. Neither the criminally insane, nor the intellectually disabled are included in this discourse. Each group of people merits a thesis on its own: criminal insanity requires a debate to include the history, psychiatric and legal approaches to the subject, and current management of the insane. The intellectually disabled are not mentally ill; their ability to function as all round, naturally competent individuals is diminished by an inadequacy and/or impairment of their intellectual capacities. The needs of these two groups are far too broad and demanding to be included within the current thesis.

Rationale for the Timeframe.

The timeframe, 1800 until 2004, has been established because it approximates to the transition from the end of the Classical through the Modern Age to the Post Modern Age, together with the predominance of Enlightenment philosophical theories, and the development of a scientific approach to medicine. Further, many politico-economic and social changes were taking place, associated with the Industrial Revolution. All are shown to have affected the introduction of asylumhood, and the institutionalization of those unable to participate actively in the industrial workforce.

Of significant importance to the development of institutionalization for such marginal groups is the philosophy of Jeremy Bentham. Bentham espoused Classical Utilitarianism which will be shown to believe that the ultimate standard of utility is not the individual's

happiness but the greatest amount of happiness altogether. The thesis will demonstrate that this philosophical view prevailed from the beginning of the Industrial Revolution, with Benthamism influencing the sequestration of the unemployable into institutional life.

Development of the Thesis.

The thesis is developed against a background of prevailing philosophical, and other changes as stated above, including the medicalization of mental illness and the development of psychiatry as a branch of medicine. There is manifestation of many social injustices to those incarcerated in the asylum in all three countries under consideration: England, USA, and Australia. It is demonstrated that social justice and human rights of their work forces were disregarded by many employers at the time of the Industrial Revolution. Such values were, therefore, unlikely to prevail with regard to the mentally ill.

Asylumdom continued with few changes in its practices until after World War II.

It is shown that the predominance of post Enlightenment theories, together with further politico-economic, social and pharmaceutical revolutionary change followed the Second World War. Encouraged also by the founding of the United Nations and World Health Organizations as well as provision of the Declaration of Human Rights, circumstances led to the process of de-institutionalization of the mentally ill. The latter were decanted with apparently unseemly haste into a community ill prepared for such a change, and with little evidence of infra- structure to support the move.

Need to conduct a National Inquiry.

There was, then, a need to investigate what was now an overt issue of mental health care. The two subsequent inquiries by the Australian Health Ministers Advisory Council, (AHMAC) and the Burdekin Report, both focused on social justice issues, and addressed epidemiological, economic, sociological and justice considerations. Within the thesis, both investigations are critiqued against a Natural Law model, using Finnis's Natural Law theory. It is demonstrated that contrary to Enlightenment principles of social justice as described by Miller, such a theory is eminently practical, and answers the needs of all members of the community, providing not merely 'the greatest happiness for the greatest number' but the common good of all

Conclusion.

Evidence shows that such a Natural Law theory is required to give a firm foundation to the needs of the mentally ill, especially at a time when relativism, economic rationalism and negative aspects of globalization prevail. Without such a basis the mentally ill are left insecure, uncertain and adrift in a world uncaring of their plight, while all the earnest exhortations espoused by Reports remain platitudes, subject to the whims of whatever government is in power. Our responsibilities to all our fellow human beings demand better from us than this.

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Bernadette Mary Ibell.

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AN ANALYSIS OF MENTAL HEALTH CARE IN AUSTRALIA,
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CHAPTER ONE
THE CONCEPT OF MENTAL ILLNESS

Introduction: The Aim of the Thesis

The aim of this thesis is to conduct an analysis of mental health care in Australia from a social justice and human rights perspective, in order to demonstrate that social justice as a philosophical manifestation of justice and fairness, is an essential ingredient in the theory and practice of mental health care, evidenced in the provision of human rights for the whole community. It will be argued that if Enlightenment and Post Enlightenment philosophical views are understood as providing the basis for mental health care policies during the past two hundred years, that given their failure to provide adequately for the needs of the mentally ill, consideration should be directed to providing a new, Natural Law conceptualization of social justice. The aim will be to show that, against such a background, mental health policies can be formulated which safeguard more adequately the rights of the mentally ill.

It will be shown that a philosophical framework based on Enlightenment philosophical thought describes the historical development of mental health care during the past two hundred years. Relevant Enlightenment theories such as Classical Utilitarianism will be described, in order to determine what influence they may have exerted over the policy implementation of sequestration of those incapable of participating in the workforce. The influence of the Genealogists through the philosophical views of Nietzsche and especially the Postmodernist Foucault, will be introduced, in order to consider whether they, in turn, have influenced twentieth century mental health care delivery. In order to do this, a conceptual approach will be used to include the historical background of mental health care in England, on which Australian mental health care was patterned, as well as the influence on mental health care policy in recent years of the United States of America. (USA) The significance of the United Nations and its offshoot, the World Health Organization (WHO) to mental health care as a result of the Declaration of Human Rights, will also be discussed within the context of mental health in Chapter Five.

The historical aspects of the past two hundred years of mental health care will be considered as a narrative account of the treatment of this marginalized group of society. In passing, it will also be shown to provide an insight into the Foucauldian employment of post-Nietzschean understanding of the manipulation of history to subvert the ‘project of understanding the project’ (MacIntyre, 1990:50). It will be shown that Postmodernist antagonism to the practice of Psychiatry could have had its origins in the rejection of the Aristotelian promotion of the liberal arts as the crafts of free persons (MacIntyre, 1990:66). In rejecting the concept of mental illness, the concept of the psychiatrist as a skilled practitioner with a basis in the art and craft of medicine is also rejected, subverting the concept of mental health care, by affirming the Postmodern belief that authority masquerades as domination and power (MacIntyre, 1990:66), in this case, in the shape of the psychiatrist. It is argued, however, that rejection of mental illness implies there are no mentally ill, perhaps just criminals. This is further marginalization of an already vulnerable people.

These historical developments will, therefore, need to be borne in mind when providing a synopsis of the historical background of mental health care in England, Australia and USA. An analysis will be made as to whether previous mental health care policies were framed against an adequate conception of mental health itself.

The Scope of the Thesis

This discourse will address the needs and care of the mentally ill, and will consider the treatment they have received in the Western world since approximately, the year 1800. The thesis will not include direct reference to the criminally insane, nor will it relate to the intellectually disabled. It is believed that both these categories of people who have serious health care, social justice and human rights’ needs, merit theses to themselves.

Rationale for the Timeframe.

The timeframe, 1800 until the current period has been established, because many historians and sociologists believe that at the end of the eighteenth century and beginning of the nineteenth, a transformation occurred from the Classical Age to the beginning of the Modern Age (Scull 1993, Shorter 1997, Foucault 1972). Michel Foucault has argued that at that time, a mutation took place by which thought entered a new dimension from which it has yet to emerge (Pearson, 1975:145). Foucault has written that these ruptures offer clues to the nature of thought itself, and has traced them through the development of psychiatry

and medicine (Pearson, 1975:141). Foucault believed the ruptures outlined the historical limits of thought, so that if we try to trace the history of psychiatry and mental illness back beyond the nineteenth century, we will lose our way (Foucault, 1972: 401), because:

“Before the rupture men saw the world through a different grid of knowledge.” (Pearson, 1975:146)

By way of explaining this phrase, and in defence of Foucault’s ‘rupture of thought’ it must be stated that healing in the eighteenth century and well into the nineteenth had its theoretical and intellectual foundations in humoral medicine, not science. It was based on mediaeval physiology derived from the teachings of Galen, a Greek physician, who had taught that a person’s health and character were determined by any of the four fluids of the body: blood, phlegm, choler (yellow bile) and black bile (Porter, 1997:75-81). Accordingly, one’s disposition might be sanguine, phlegmatic, choleric or melancholic. The art of medicine was seen as producing and maintaining the body’s balance between these fluids in order to sustain health. The physician believed that his ‘cure- all’: purges, vomits, bleedings and secret powders, the ingredients of which were known only to the specific doctor, were the weapons of choice to use against any and all types of ill- health. Consequently, the doctors’ demonstrable ability to regulate the secretions by bleeding, defaecation, urination and perspiration, gave them power in the eyes of the community (Porter, 1997:184). These concepts of healing were alien to the scientific mantle which medicine would don in the Modern Age, and to which the soon- to- be- established psychiatric discipline would aspire (Foucault 1973). (1)

This rupture of thought Foucault described as an ‘episteme,’ which he explained as a formation of knowledge in its broadest sense: a space of knowledge within which thought can take place (Pearson, 1975:146). In this sense, Foucault declares that the rupture of knowledge is delineating the limits of discourse. Because we cannot conceive psychiatry and medicine through eighteenth century thought processes, it is impossible to enter into dialogue with the rationale of treatment before the dawn of the modern age.

Alasdair MacIntyre has claimed that in using the term ‘episteme’ to describe the set of relations which in any given time unify the discursive practices underlying any one such body of claims, Foucault is mocking Plato and Aristotle’s use of that word by which they described ‘knowledge’ (MacIntyre, 1990:52). Plato was concerned with the nature of knowledge, and while in Republic 477e 6, he seems to suggest that the role of knowledge

should be reserved for that over which there cannot be error, Hamlyn has asserted that Plato was more concerned with what distinguishes knowledge from belief, construed as having something simply before the mind, and considered as true or false (Hamlyn 1971, in Honderich, 1995:242-5). Aristotle was similarly occupied and is stated to have repeatedly argued that we have knowledge proper (*episteme*) of something when we know its reason or cause. Knowledge proper, as Aristotle conceived it, entails bringing its object within a context of explanatory and reason-giving propositions which amount to science as Aristotle saw it (Hamlyn 1971, in Honderich 1995:243).

By the nineteenth century, Enlightenment philosophical views predominated in England, North America and most of Europe. Before the Enlightenment, the traditional (Natural Law) Aristotelian-Thomistic understanding of ethics and morality formed the major philosophical view used throughout Christendom. Derived from Greek traditions of Justice, there was an accepted and understood nexus between Faith and Reason. This nexus was broken by the Enlightenment philosophers who believed in the use of Reason only. While Foucault as a good Postmodernist too rejected Faith, he would also reject the Encyclopaedist (Enlightenment) view that there was only one objective way of seeing things through the use of Reason. The relevant philosophical views of the Enlightenment and Genealogist (Anti-Enlightenment including Postmodernist) Schools will be discussed in Chapter Two.

Only during the end of the eighteenth and into the nineteenth centuries would medicine gradually develop a scientific profile, and form the discipline which is recognizable today. Furthermore, census figures only began to be collected in England from 1801, so that epidemiological evidence became available. It was also at the beginning of this period that England came under the sway of the Enlightenment classical Utilitarian philosophy in the form of Benthamism, during which the sequestration of the unemployable became established practice, and asylumdom the preferred method of housing and treating large numbers of the insane (Giddens, 1991:158-160). The time frame then, would appear to be justified.

For over one hundred and fifty years, from approximately the year 1800 onwards in the Western World, the mentally ill were confined to asylumdom. That is, they were sequestered within an institution, designed to protect both the patients from themselves and

the community in the name of safety. Within the specific building, supported financially by Local Authorities, or in a few cases, in privately owned houses, the mentally ill lived apart from the remainder of society, with a staff of attendants and under the supervision of psychiatrists (Mellett, 1982:160). Apart from visits from relatives, they formed an unseen section of society, unknown to the community at large, and rarely discharged once consigned to the asylum (Scull, 1993:309-310). How this situation came into being, how insanity was nominated and captured as a disease which could only be treated by the medical profession, what factors influenced the duration of the asylum for so long a period, and the effects upon the mentally ill of their removal from asylums (in Australia during the 1970s) back into the community, (the process known as de-institutionalization), will be analyzed within this thesis. During the period of asylumdom, and even since the rapid movement toward de-institutionalization, it will be shown that mental illness policies and treatment, based on Utilitarian principles, were inadequate in providing social justice for inmates of such institutions. Because of these inadequacies, it will be argued that basing policies on a Natural Law Theory would improve matters, and it will be shown how such policies may be implemented to give the mentally ill justice on a parity with all other members of society. First, however, it is necessary to examine the concept of mental illness, and decide who are the mentally ill.

The Concept of Mental Illness: Who are the Mentally Ill?

To discover an answer to that apparently straightforward question is difficult. Until the end of the eighteenth century, mental illness (then known as ‘lunacy’), was not considered to be a medical condition. Mental illness seems to have been accepted as a fact of life (Scull, 1993, Shorter, 1997). Life was mostly rural in England and Europe, and those members who suffered from seizures and other apparent manifestations of mental illness were cared for at home within their small village communities (Scull, 1993:8). This does not imply that their life was gentle and easy. Shorter has reported troublesome individuals as having been chained down in a corner of the stable (Shorter, 1997:3). In urban life, small hospitals existed. Bethlem in London was founded in the thirteenth century, and by 1403 housed six insane men (Shorter, 1997:4-5). Such institutions existed throughout Europe. Dorothy Dix would report similar conditions and institutions in Massachusetts, USA. at the beginning of the nineteenth century (Shorter, 1997:4-5).

From approximately the middle of the eighteenth century onwards, it was not unusual to find wealthy but insane individuals whose families found them difficult to manage, living in private houses in which they could be supervised, and which belonged to either a doctor or clergyman. Because these doctors often treated only the mentally ill, they became known officially as ‘alienists’, and will be shown to have played an important role in the establishment of asylumdom (Parry Jones, 1972). Only from the nineteenth century, however, would the insane in large numbers be identified as such, and isolated in institutions which demonstrably grew with time.

Legal Definitions of Mental Illness.

So what is meant by ‘mental illness?’ How does the law define it? From the legal point of view, a legal model must surely safeguard human rights where the liberty of the individual is involved, by containing a clear definition of mental illness, because, implicit in law is a precision of definition, an exactness of what is meant by a statement (O’Sullivan, 1981). Likewise, working definitions of involuntary (confinement to the asylum by direction of the law) and voluntary status (confinement of the patient’s own volition), as well as legal guidelines for admission and discharge processes would all appear to need legal exactness in their definition because again, in many cases, especially where involuntary committal which does not depend on the wishes of the individual is concerned, the liberty of the individual is involved.

With regard to the legal definition of mental illness, O’Sullivan has written that:

“Judges who must provide definitions where statutes fail, have not been too anxious to attempt to clarify ‘mental illness.’” (O’Sullivan, 1981:1)

In the case *W. versus L.*, L.J.Lawton decided:

The words (mental illness) are ordinary words of the English language. They have no particular legal significance. How should the court construe them? The answer in my judgment is to be found in the advice which Lord Reid recently gave in *Cozens v. Brutus* (1973) AC 854, 861, namely, that ordinary words of the English language should be construed in the way that ordinary sensible people would construe them. (O’Sullivan, 1981:1)

These words imply that the term ‘mental illness’ may be applied in a variety of situations to a wide range of people. Even if the term ‘insanity’ is used, the law has shown little enthusiasm for its use (O’Sullivan, 1981:1). Mr. Justice Devlin presiding over *R. v. Kemp* remarked:

“Insanity is not a legal term and there is no such thing as a legal definition of insanity.” (1957, Q.B. 399)

Glanville Williams, however, a leading authority on criminal law has stated that the term is a legal one; it was used originally by lawyers believing it to be a medical term (O'Sullivan, 1981:2). Whatever the legal disputes may be over the terminology, 'insanity' is a term still in use in legal circles but applied to criminal law; however, criminal insanity is not a part of this thesis. The above discussion is included to demonstrate the varying expert opinions that exist in discussing the definition of mental illness.

This evasiveness over confronting the definition of mental illness has progressed down the ages and mirrors the difficulty that both doctors and lawyers have faced in deciding what mental illness is. While the terminology of 'Lunacy Act' had changed during the 1960s to 'Mental Health Act' in most Australian States, on the eve of the Burdekin Report 1993, statutory definitions were still vague as the following examples given by O'Sullivan show:

New South Wales and the Australian Capital Territory

'Mentally ill person' means a person who owing to mental illness requires care and treatment or control for his own good or in the public interest, and is for the time being incapable of managing himself or his affairs, and 'mentally ill' has a corresponding meaning. (By Section 4)

Victoria

'Mentally ill person' means to be suffering from a psychiatric or other illness which substantially impairs mental health. (By Section 3)

Queensland

No definition attempted. By Section 5 (2) of the Mental Health Act, 1974, however:
drug dependence ... (is a) form of mental illness.

South Australia

Mental illness means any illness or disorder of the mind. (By Section 5)

Western Australia

Mental illness' means a psychiatric or other illness that substantially impairs mental health. (By Section 5)

Tasmania

'Mental disorder' means mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind; and 'mentally disordered' shall be construed accordingly'. (By Section 4)

Northern Territory

No definition attempted. (O'Sullivan, 1981:8-10)

O'Sullivan has commented that presumably, with such vague, and in some cases non-existent statutory definitions, the words of Lawton already referred to must have been

applied: that the words ‘mental illness’ would be construed in the way ordinary, sensible people would construe them (O’Sullivan,1981:1). But how do ‘ordinary, sensible people’ construe them? Professional people are likely to discuss ‘psychiatric patients’, ‘psychiatric hospitals’ and ‘psychiatrists’. More often, everyday language employed by members of the community speaks of ‘nut cases’, ‘funny farms’ and ‘trick cyclists’. The use of such everyday language can affect our actions in our own everyday conduct with the mentally ill.

Hare has stated that actions are

“...revelatory of moral principles, the ...function of which being to guide conduct”. (Hare 1972:1)

The language of morals is part of prescriptive language. R.M. Hare has been a principal advocate in advancing a theory about the meaning of moral terms such as ‘good’ and ‘right’. The theory contrasts descriptive meaning, in which language is used in order to state facts, and the prescriptive meaning which characterizes moral language (in Honderich, 1995:715). Wittgenstein has argued that meaning is given by use and is defined by context as a ‘form of life’ (in Honderich, 1995:912). Hacker commenting on themes occurring in the philosophy of Wittgenstein, has asserted that:

“Speaking is not a matter of translating wordless thoughts into language, and understanding is not a matter of interpreting-transforming dead signs into living thoughts.” (in Honderich, 1995:915)

The possession of a language extends the will. It follows that the the use of terms such as ‘nut case,’ ‘funny farm’ and ‘do-gooders,’ forms a language which can or might impose limits of empathy between ‘normal speakers’ and their disadvantaged fellow-human beings. The objective of the language is to describe the user’s view of mental illness and of the mentally ill. There is also the use to which professionals put the language. Wittgenstein in his discussion of language games illustrates the notion that professionals use language for their own purposes, within a particular discourse which others are not privy to (in Honderich, 1995:915).

Following on this line of thinking, Antonio Gramsci, the Marxist philosopher, (1891-1937) also writes of how some groups establish hegemony over others by getting acceptance of the groups’ ideas as commonplaces; that is, the idea that there is only *one* definition of ‘mental illness’ –theirs (1971:323). This theme will be expanded upon in Chapter Three (pp.132-136)

when the establishment of psychiatry as a medical discipline will be introduced. Gramsci, writing from prison was to comment that:

“Language itself is a totality of determined notions and concepts, and not just words grammatically devoid of content.” (1971:323)

Gramsci believed that using Piagetian psychology, the untutored intelligence manifests itself in concepts which are pre-operational with reference to scientific and social modes of ‘thought’ (1971:323). Commonsense could be a mixture of ‘good sense’ which Gramsci saw as the positive potential of commonsense - a state of mind in which commonsense is purged of superstition and folklore, and given a ‘coherent unity’ through exposure to philosophers’ philosophy (1971:354). Philosophy is the criticism and superarching of commonsense; in this context, it coincides with ‘good’ as opposed to ‘commonsense’ (1971:526). It is important therefore, that employing Gramsci’s argument, ‘mental illness’ should be interpreted in terms that may be understood and used with dignity for all concerned. Those who consider mental health issues in terms of rudimentary (commonsense) language are likely to act towards the mentally ill in either a careless, indifferent or unfeeling way. Their conduct then reveals the principles in which they believe. This is important, for as Hare has indicated, there is a need for understanding of the language in which we respond to these problems, because confusion about our own moral language will lead to confusion about how we react practically to the problems, as shown above (Hare, 1972:1-16).

Hacker argues that the task of philosophy is conceptual clarification and the dissolution of philosophical problems. The goal of philosophy is not knowing but understanding (Hacker in Honderich, 1995:912-916). In agreeing with this statement, within the thesis, conceptual clarification of the philosophical views prevalent at the time under review will be presented, and the significance of that philosophical view to the current mental health policy under discussion will be analyzed. Within Chapter Two, it is anticipated that the task of philosophy and its goal will be pursued, in order that a foundation may be laid, enabling us to conceptually clarify what we mean by social justice, why we need to understand its relationship to mental health care, and why social justice for the mentally ill is a goal that needs to be part of health care policy and practice.

With regard to justice for the mentally ill, each Australian State and Territory during the 1950s attempted to address the problem legally, in a way that would not violate the individual's human rights, while protecting the mentally ill and guaranteeing the safety of the community. Many of the definitions, however, as has been shown, were vague. If the definitions were vague, it is difficult to see how the legal status of the mentally ill patient might be accurately defined, and the human rights of the mentally ill adequately safeguarded during that period. There was a lack of standardization existing between all States and Territories. Table 1.1 (page 10 A) depicts the variations in legislation for patients' rights in each State/Territory until the end of the 1980s.

Sociological Implications.

The vagueness of legal definitions of mental illness has thrown great responsibility on to medical diagnosis. This implies that there must be firstly, an organic cause, secondly, certain assumptions about diagnostic measures and thirdly, a certain approach to treatment strategy (Scadding, 1967:877). Will the medical diagnosis be assisted by sociological considerations? Talcott Parsons in defining the 'sick role' postulates the four following consequences:

- The sick person is excused by society from fulfilling his normal social obligations such as going to work every day. He may legitimately, for instance, lie in bed all day.
- The sick person is not blamed for his condition and, therefore, need not feel guilty about his unfulfilled social obligations.
- It is recognized by both the patient and society that he must want to get well and make every effort to do so by recognizing the need of outside help. The role of the sick person is only legitimized when he cannot help being sick.
- The patient must put him in the hands of those agents appointed by society as being technically competent to help, namely, doctors. It is tacitly understood that the patient's role includes co-operating with the doctor in order to get well. (Parsons, Talcott (1966:246)

Illness may be seen by Parsons as inappropriate behaviour, in so far that the patient fails to fulfill his/her other expected role in society; Parsons, therefore, stresses restoration to the normal societal role as an essential part of therapy. This presupposes that society as a system is ideally in a state of equilibrium, so that, for example stress and change are seen as dysfunctional. Further, Parsons' model assumes that the doctor will be accepted as the only technically competent person to assist the patient. Parsons' definition and postulates are discountenanced in their own right, because, by his own definition, Parsons disallows illness as a component of mental illness:

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Table 1.1

SUMMARY OF PATIENT'S RIGHTS

	N.S.W. & A.C.T.	Victoria	Queensland	South Australia	Western Australia	Tasmania	Northern Territory
Confidentiality, duty of				48(1)			
Correspondence, to be delivered unopened (1)		79 (1)	53 Regulation 88		59 (1)	109 (5)	20 (1)
E.C.T., restrictions on	109 (3)			19 (1)			
111 treatment, willful neglect a criminal offence (2)	106	107	59 (1)	44 (1)	61 (1)	106 (1)	
Rights in civil courts preserved if assaulted (3)	106			44 (2)			
Interview, right to					58 (1)		
Leave of absence	19 (1) 21 (4)	87 (1)	46 Regulation 20 (viii)	14 (11)	42(1)	28 (1) (2)	
Legal representation (4)							29 (a) 19 (b)
Magistrate's hearing prior to commitment (5)	12 (9)						7 (1) 9 (2)
Money, right to withdraw	101A (3)						
Death, notice to be sent		62					
Periodic examination	15	82 (2)	21 (3)	35 (1)			
Physical restraints, restrictions on (6)		65 (1-8)	56 Regulations 81-83		Regulations 13	107 (2) (3)	
Records to be kept of physical restraint		65 (6) (7)	56 (4)			107 (4) (3)	
Psychiatrist, right to examination by		42 (4)	21 (4)	14 (3)	39 (2)		
Psychosurgery, restrictions on	108	102		19 (1)			
Records to be kept: 1. State Hospitals 2. Authorised hospitals	11 (7)	60,61		11 (1) (2)			
Research & patients, restrictions on							37
Rights under the Act, compulsory notice of (7)		83	Regulation 20	16 (1) (a)			
Sterilisation, restriction on							25 (4)
Tribunal or equivalent, right of appeal to							
Visits, right to receive	14 (1)	77	43	36 (1)	60 (1)	110	20 (1)

“A mentally ill person, is then, in my view, a person who by definition cannot get along adequately with his fellows, who presents a problem to them directly on the behavioural level.” (1957:108-129)

Such a definition would ignore the organically based psychoses and neuroses. It also ignores the consideration of drug addiction as an illness, or at least implies that it may be an illegitimate illness. (2) The use of prohibited drugs is an area of mental health care which has proliferated with the increase in mind altering drug usage in the past forty years. Treatment of such drug users is at the centre of serious social, political, religious and ethical disagreement, and has disturbing overtones for society. Further reference will be made to this problem in Chapter Five of the thesis (pp 235;288).

The great value of Parsons’ model is that it clarifies the conceptualization of a medical model and demonstrates how such a model works. Within such a model, it is necessary for the psychiatrist to know how medicine classifies mental illness. By definition, ‘medical model’ in health research is the symbolic representation of the interrelations exhibited by a phenomenon within a system or process. The model is presented as a conceptual framework or theory that explains a phenomenon and allows predictions to be made about a patient or a process (Mosby’s Medical, Nursing and Allied Health Dictionary 3rd ed. 1990).

Medical Classification of Mental Illness.

How are mental illnesses classified? They are interpreted by psychiatrists who identify clusters of symptoms and signs which relate to disturbances in mental functioning. Not only lawyers have difficulty in defining mental illness. The work of Scadding is important in this regard, in that he demonstrates that the problems in defining mental illness relate not to the fact that mental illnesses of a classical type exist as disease or syndromal entities, but relate to uncertain aetiological factors (such as biochemical, genetic) (Scadding, in The Lancet 1967:877). Moore has commented that our language is rich in providing labelling vocabulary for various mental powers. For example:

“We have capacities of perception, of memory, of imagination or learning; the basic capacities of reasoning and thinking; the capacities to feel emotion and the capacities of will to have one’s emotions and desires issue in one’s action.” (1980:60)

It is surely the impairment of these mental functions that we have in mind when speaking of someone as being mentally ill. It is suggested that these symptoms are behavioural symptoms and that, consequently, the criteria which are applied to the mental health

definition should be linked to the behaviour of the individual who is considered to be mentally ill. The person who is deemed to be mentally healthy responds in a predictable and intelligible manner to situations. For example, when hungry, s/he can perceive a need for food and utilize both will and desire in order to obtain and eat. Such a person may have perhaps, personality traits of vanity or discourtesy. Characteristically, future behaviour will be predictable because there is a pattern of vanity or discourtesy in the past and present, and these traits will not interfere with the psychological drive to answer the physiological need for food in order to reduce the hunger stress.

The ‘mentally ill’ individual, however, may have an unintelligible pattern of past behaviour-perhaps no pattern at all- and his/her behaviour is consequently unpredictable. The actions may be unintelligible, they may be inconsistent and incongruent because they are unconscious, and therefore, they do not fall into a pattern of consistent, coherent wants. Behaviour may be aggressive or discourteous for no apparent reason at one instance, and unpredictably gracious in identical circumstances at the next instance. Such behaviour is deemed irrational to those labelled as ‘mentally ill’, and it is essentially the irrational behaviour which is the primary symptom of the mental incapacities called ‘mental illness’.

The mental abilities of perception, memory, imagination and reasoning are necessary for the acquisition of rational beliefs and the rendering of consistency between belief sets and between desire sets...Being mentally ill means being incapacitated from acting rationally in the fundamental sense. (Moore, 1980:60)

What might be thought of as aberrant behaviour is at least partially determined by societal norms of behaviour. At first glance behaviour demonstrated by the mentally ill may appear ‘normal’ to those members of society unaware of some manifestations of the mentally ill. Such manifestations, however, may be not normal, but demonstrations of irrational behaviour. **(3)**

The psychiatrist usually identifies symptoms of mental illness which relate to one or other of the standard psychiatric diagnostic protocols. The most frequently used is the World Health Organisation (WHO) devised “Index and Glossary of Mental Disorders of the Tenth Revision of the International Classification of Diseases” (ICD). This classifies mental disorders as psychotic, neurotic disorders, personality disorders or other non-psychotic disorders, as well as mental retardation. The classification is outlined in Table 1.2 at page 12(A).

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TABLE 1.2

THE INTERNATIONAL CLASSIFICATION OF DISORDERS -IX -R.
CLASSIFICATION OF MENTAL DISORDERS.

Psychoses.

Organic Psychotic Conditions:

Senile and presenile organic psychotic conditions;
Alcoholic psychoses;
Drug psychoses;
Transient organic psychotic conditions;
Other organic psychotic conditions (chronic).

Other Psychoses.

Schizophrenic psychoses;
Affective psychoses;
Paranoid states;
Other non-organic psychoses;
Psychoses with origins specific to childhood.

Neurotic, Personality and Other Non-Psychotic Mental Disorders.

Neurotic disorders, including anxiety state, hysteria, phobic state, obsessive-compulsive disorder, neurotic depression. And other conditions;
Personality disorders;

Sexual deviations and disorders;

Alcohol dependence syndrome;
Drug dependence;
Non-dependent use of drugs;
Physiological malfunction arising from mental factors;
Special symptoms or syndromes including stammering, anorexia nervosa, tics, sleep disorders, etc;
Acute reaction to stress;
Adjustment reaction;
Specific non-psychotic mental disorders due to organic brain damage.

Mental Retardation

Mild mental retardation;
Other specific mental retardation;
Unspecified mental retardation. (The last category is not relevant to material used within this thesis.)

Cited in Human Rights and Mental Illness.: A National Inquiry concerning the Human Rights of People with Mental Illness. (Brian Burdekin, Chairman. And Federal Human Rights Commissioner.)

AGPS Canberra, 1993 Pp.44-45.

A major comprehensive psychiatric classification system was developed by the American Psychiatric Association (APA) and has been accepted by psychiatrists internationally: “The Diagnostic and Statistical Manual of Mental Disorders” first published in 1952, and known subsequently as DSM.1. This was last revised in 2000 as DSM.1V-TR. Shorter has suggested that these details are important, because a naming system incorporates the dominant philosophy of the day (Shorter, 1997:298). This statement will be explored later within the thesis.

Development of the Thesis.

The prevailing philosophy of the period under discussion will form the background in which the care of the mentally ill will be analyzed, especially in relation to social justice and human rights. Within the framework, the riddle of why and how asylumdom came into existence will be addressed. How insanity came to be appropriated as an illness by the newly developing discipline of psychiatry, and why both doctors and reformists among the politicians opted for asylumdom when cheaper models of therapy might have existed, are phenomena which have puzzled historians and sociologists alike. Scull has asserted that in England, the state-run asylum system represented the most striking and lasting legacy of the reform movement (Scull, 1993:9). This thesis will show that it is relevant to revisit these concepts, and analyze their consequences, because contemporary controls are ‘constrained and oriented by the past.’ (Scull, 1993:9) Paul Rock reminds us that:

“Each new generation does not rewrite the social contract.” (1973:156, 159)

Justification for the thesis.

While there have been at least forty inquiries in New South Wales alone into psychiatric facilities and services since the first recorded case of mental illness in 1801, the focus of these State/Territory investigations has concentrated on maladministration, under-resourcing, overcrowding, abuse and harassment, together with inadequate legislation. There had been only two inquiries attempting to provide a national perspective: *Mental Health Facilities and Needs of Australia* (Stoller and Ascott: 1955), and *National Mental Health Services Policy: The Report of the Consultancy to advise Government, State and Territory Health Ministers* (Eisen and Wolfenden: 1988), before the Australian Health Ministers’ Advisory Council (AHMAC) Task Force was convened in 1991 to consider strategic planning to meet the needs of the mentally ill, and the *National Inquiry into the Human Rights of People with Mental Illness* (henceforward called the ‘Burdekin Report’),

by the then Human Rights and Equal Opportunity Commissioner, Brian Burdekin (1993). Both the AHMAC and Burdekin Reports will be analyzed in Chapter Five, and their outcomes will be addressed.

Neither of the first two national inquiries considered the issue of human rights and social justice in relation to those affected. Nor have any theses been discovered which have been written that have analyzed the relationship of the philosophical concept of social justice and human rights to mental health care. In fact, mental illness itself does not appear to have elicited much interest in the academic world. Yet it is impossible for bureaucracy, academia, the health professions or the remainder of the community to ignore the fact that this problem is large, and needs a strong moral basis to give strength to the justification for the treatment of the mentally ill on a parity with all other citizens. The thesis, therefore, will aim to rectify this omission and will conduct an analysis of the care of the mentally ill from a social justice and human rights perspective. The following reasons further justify the writing of the thesis.

-Epidemiological Reasons.

While there was a dearth of epidemiological surveys, and an absence of a comprehensive data base, prior to the Burdekin Report and AHMAC Survey, Burdekin, for example, cited the following statistics. At least 250,000 Australians (approximately 1.5 per cent of the population) suffer from major mental illnesses, and approximately one in five adults have, or will develop, some form of mental disorder (*Burdekin Report, 1993:13*). While approximately 1 per cent (170,000 Australians) suffer from Schizophrenia, 20 per cent of people experiencing an episode of Schizophrenia recover without the need of hospital intervention. Approximately 40 per cent suffer recurrent episodes over several years, and approximately 35 per cent will be affected throughout their lives. In any one year, it is believed that one in five people affected by Schizophrenia require hospitalization (*Burdekin Report, 1993:14*). Evidence shows that approximately 15 per cent of adolescents suffer from some sort of mental health problem such as clinical depression (between 60% and 90% of young people who commit suicide are depressed) (*Burdekin Report, 1993:14*), while 1 per cent have serious psychiatric disorder (Professor Tonge (in the *Burdekin Report, 1993:14*). The elderly also, demonstrate an increase in mental disorder with advancing age, a rapid rise being shown to occur after the age of 65 years (*Burdekin Report, 1993:15*). Burdekin believed that 100,000-140,000 Australians suffer from

moderate to severe dementia, while approximately 50 per cent of elderly people have at least one symptom of depression (Professor Snowden, Oral evidence, in the *Burdekin Report*, 1993:15). Similar epidemiological figures are representative of the prevalence of mental illness in USA, (Goffman 1961). and United Kingdom (UK), (Burdekin,1993:4-5). There is then a causative factor of mental illness affecting family members to be considered when dealing with problems of, for example, dysfunctional families.

D.T. Richmond who was Chairperson of the *NSW Inquiry into Health Services for the Psychiatrically Ill and Developmentally Disabled: 1981 (The Richmond Report)*, wrote:

“Mental illness touches all socioeconomic groups in Australia, and there is growing evidence that its morbidity is greatest in the most productive working years when family responsibilities are also at their peak.” (*Richmond Report, NSW. 1981:17*)

-Need to stimulate interest in professionals and members of society.

Perhaps no other segment of society evokes more apathy among those who could assist: lawyers, health professionals themselves and other members of the community. To assert that ‘thousands of Australians’ are affected is not a sweeping statement. Approximately 60,000 people enter psychiatric hospitals or psychiatric units attached to general hospitals annually in Australia. The entrants to Australian prisons annually amount to about 10,000 people, but they engender studies and articles which greatly outnumber those devoted to the mentally ill (O’Sullivan, 1981:6). There is a marked lack of interest among lawyers for example, in the mental health field. O’Sullivan has suggested that:

There is not enough money to be made in the health field for the mainstream of lawyers to become involved, so the advocacy of the legislation of mental health is likely to be the province of young radical lawyers and academics with a good deal of enthusiasm but little knowledge of the realities of psychiatric and medical practice. (1981: 25)

-Need for a National Inquiry to address mental health issues.

Preliminary investigations conducted in 1993 by the then Human Rights and Equal Opportunity Commissioner Mr. Brian Burdekin, prior to a National Inquiry into the Human Rights of People with Mental Illness (*Burdekin Report*, 1993) revealed:

- Widespread ignorance about the nature and prevalence of mental illness;
- Widespread discrimination against people affected by mental illness;
- Widespread misconceptions about the number of people with a mental illness who are dangerous;
- A widespread belief that few people who are affected by mental illness ever recover. (*The Burdekin Report*, 1993: 3-4)

There is then a need to investigate the policies and practices of mental health care for the mentally ill in Australia, especially following the emphasis on community health care since the 1970s for this section of society. This need has been re-affirmed by the findings published in the Burdekin Report, and in order to discover whether the treatment meted out for the mentally ill is just and comparable with that received by all other members of the community.

-Need to address economic considerations.

The cost of mental illness to Australia (currently over \$1.56 billion per annum) represents an estimated 4.6 per cent of national expenditure on health (*National Mental Health Report, Canberra, 2002:16-22*). National spending on mental health increased by 30% during the period of the First National Mental Health Plan, and by 44% during the Second National Mental Health Plan. (*National Mental Health Report, 2002:16-22*). Both these National Health Plans will be discussed further in Chapter Five, (pp.270-273). Budgeting, therefore, needs to be undertaken realistically, with the aim of producing the best possible health services for the mentally ill that will be fair and equitable with all other parts of health care delivery. The model for mental health care then must be just, practical, feasible and sustainable given the current social, political and fiscal parameters.

-Need to address justice issues.

There are many ways of judging a health system; for example, its economic efficiency, its medical effectiveness, or its political popularity. Assessing whether it is *just* is only one question we properly ask, but it is an important one because the mentally ill form a vulnerable and often inarticulate section of the community. In addition, when considering the issues raised in the Burdekin Report as shown above, it is essential that the Human Rights of the mentally ill are upheld, and, in other words, social justice is applied in such a manner that their vulnerability causes us to show particular concern for them.

Since 1992, a national approach to mental health care delivery in Australia has given rise to a plethora of Commonwealth funded research, investigations, and the production by each State/Territory jurisdiction of numerous reports. Each glossy booklet is filled with statistics, coloured pie charts and bar graphs, admitting and demonstrating the need for mental health reform using a social justice perspective. All publications issue numerous proposals as to how this is to be implemented. The production of such literature, however,

no matter how attractive the presentation may be, or how sincere the reformers' intentions, has to result not only in implementation but also must be internalized, so as to produce a wholehearted desire for reform by all sections of the community.

It is the contention of this thesis, that a foundation of social justice is required in order to create the conditions for a fair and just health policy to be implemented. But what is social justice? Social justice is either extolled or denigrated by politicians and their followers. It has been politicized in society so that it is sometimes considered to be a 'left wing' concept (Theophanous, 1994). It has connotations of 'preferential option for the poor' often spoken of by Catholic and other religious leaders (Pope John Paul II, 1987:42). A better elaboration and a more integrated conception of social justice is needed. Rodger Charles, S.J. has placed the phrase within the wider context of justice, stating:

"Justice is the virtue which enables us to give to others what is theirs by right, that to which they have a moral right, and one that can be vindicated by law: the function of law being to secure justice." (Charles, SJ. 1998: 396)

Using this definition, Charles argues that in society, justice must be done at all levels. General justice which is the responsibility of the legislator produces justice in society, that is social justice, and enables all citizens to develop their potential (Charles, SJ, 1998:396). Citizens are given the responsibility of responding to the legislator by obeying just laws, and contributing to the wellbeing of society (Charles, SJ. 1998:396). The fact that the legal system may not always produce justice, does not in any way detract from the truth of the above statement. Defects are the results of human error and weakness.

Just like everyone else, the mentally ill are entitled to social justice. So important is it, that this thesis will allot the next chapter to developing the argument for the need for social justice, how it is viewed in different theories of justice, and why a firm philosophical foundation is required. This needs to be done in order to develop the concept in such a way that social justice practices can be put in place which fulfill both the needs of the mentally ill together with those of all members of society.

-Need to investigate the policies and practices of mental health care in Australia.

As has already been stated, there is a need to investigate the policies and practices of mental health care for the mentally ill in Australia, especially in the aftermath of the wholesale deinstitutionalization of the mentally ill during the 1970s. Current views of

mental health will be considered, historically, against the background of mental illness and health care prevailing at the period of time under scrutiny. It will be argued that, after consideration of Encyclopaedist (Enlightenment) and Genealogical (later anti-Enlightenment) philosophical views which have already been employed, and in justifying particular mental health policies, a Natural Law and Natural Rights philosophy offers a better framework within which to develop mental health care. The typography of 'Encyclopaedist' and 'Genealogist' attributed to MacIntyre will be used throughout the thesis in order to facilitate management of the topic (MacIntyre, 1990).

Conversely, the thesis also must address the antithesis to the argument for positive care of the mentally ill. It will be shown that reflecting the philosophical rebellion against the Enlightenment philosophical views, influence has been brought to bear by genealogists in recent years on the theory and practice of mental health, denying the existence of the phenomenon of mental illness itself. It has been alleged that the purported existence of mental illness is a plot instigated by doctors and drug houses as part of a colossal capitalist scam (Shorter, 1997:272-277). This allegation will be analyzed.

The following questions will be asked:

1. What is mental illness, and how has it been treated in the past? Who are the mentally ill?
2. What is social justice and what part did it play (if any) during the asylumdom era in the treatment of the mentally ill?
3. How may a Natural Law and Natural Rights theory provide a more satisfactory model for the implementation of social justice in the delivery of mental health care?
4. What was the concept of asylumdom and what was its relation to the prevailing philosophical climate? In what circumstances was asylumdom implemented and what were its positive and negative aspects? Were the rights of the mentally ill safeguarded?
5. What circumstances brought about de-institutionalization in the Western World, particularly in Australia?
6. Following the recommendations of the AHMAC, and Burdekin Reports, and measured against the background of an adequate Natural Law and Natural Rights conceptualization of social justice, are the current mental health policies adequate? Do

they safeguard the rights of the mentally ill, and are they framed against an adequate concept of mental health?

In order to address these questions, the thesis has been developed accordingly:

Chapter 1. Introduction: The aim of the Thesis

- *The Scope of the Thesis.*
- *Rationale for the Timeframe.*
- *The Concept of Mental Illness: Who are the Mentally Ill?*
- *Legal Definitions of Mental Illness.*
- *Sociological Implications.*
- *Medical Classification of Mental Illness.*
- *Development of the Thesis.*
- *Justification for the Thesis.*

Chapter 2. The concept of justice: social justice as an essential component of justice.

Chapter Two A

- Introduction: The aim and overview of the chapter.
- Contrasting theories of justice arising out of the Age of Enlightenment, and historically relevant to mental health policy making and mental health care.
- Consideration of Utilitarianism in relation to mental health care and social justice for the mentally ill.
- Significant contrasts briefly outlined between Libertarianism, Egalitarianism and Communitarianism, with regard to the needs of the mentally ill.
- Moral arguments of the Genealogists and their relevance to justice for the mentally ill.
- A brief review of Marx and the Enlightenment in relation to justice and social justice for the mentally ill.
- Nietzschean influences affecting mental health care and social justice.
- Post-Nietzscheanism: Michel Foucault, and Post-Enlightenment theory influencing mental health care.

Chapter Two B

- A Theory of Natural Law and Natural Rights as described by John Finnis, and related to justice for all, including the mentally ill. Construction of a Natural Law

Model in accord with Finnis's theory of Natural Law.

- Principles of social justice as interpreted by Enlightenment theorists (the Encyclopaedists) and their significance for the mentally ill.
- Conclusion.

Appendix 1. Chapter Two: Human nature, personhood and individuality showing the basis of human dignity and human rights.

Chapter 3. The Concept and Practices of Institutional Care (Asylumdom) in UK, USA, and Australia.

Chapter Three A

- Introduction.
- A definition of Asylumdom; historical factors which influenced its establishment.
- The Rationale for Institutionalization: more immediate factors which led to the foundation of Asylumdom; the Psychiatric Factor.

Chapter Three B

- The Reality of Asylumdom: what happened within the Asylum in UK, USA, and Australia.
- Psychiatric Practices in all the three countries: Outcomes of Asylumdom.
- Conclusion.

Chapter 4. Challenges and changes to the care of the mentally ill post World War Two.

- Introduction.
- Enlightenment influence on Pharmacological and Medical Revolutions affecting mental health care post World War II.
- The shifts in philosophical views affecting psychiatry: Postmodernism and the anti-psychiatry movement.
- The resulting shifts in societal outlook: social, political and economic changes affecting mental health care.
- The concept of de-institutionalization. How it changed mental health care and why.
- Conclusion.

Chapter 5. The Challenges of Social Justice and Human Rights. Meeting the needs of the Mentally Ill in a climate of De-Institutionalization.

- Introduction.
- Implementing Natural Law in the modern world: a challenge to Utilitarian Social Justice Principles.
- Development of Human Rights talk post World War II: The Universal Declaration

of Human Rights.

- Significance of the AHMAC, and Burdekin Inquiries into mental health care, in relation to Human Rights, Social Justice and the Common Good.
- Current mental health care in Australia in relation to Utilitarianism and Natural Law (Finnis's) theory.
- How might a Natural Law theory provide a substantively different set of policies concerning the treatment of mental illness.
- Conclusion

Chapter 6. Conclusion: Summation of the Thesis.

Within this chapter, a summation will be made of the evolution of mental health care from the beginning of the Age of Enlightenment to the present time; the period which has been addressed in this thesis. Definitions of key concepts employed within the thesis will be included. The mental health care policies and practices which have been analyzed within the thesis will be re-visited against the background of the various socio-economic, political and medical changes which have taken place. It is anticipated that arguments that have been mounted throughout the thesis will have proved the need for social justice and a strong philosophical framework within which to develop mental health care. Both social justice and a belief in the common good will be re-emphasized as essential to the future development of a healthy society in which the disadvantaged, whatever their handicaps may be, can be strongly supported by the community, mutually enjoying the implementation of the common good.

It will have been argued that each of us is individually responsible for demonstrating belief in a value system such as Natural Law, which will provide justice and allow the marginalized and deprived members of society to reach their potential for that is their unassailable human right, and justice demands it. The human being is not a robotic member of the workforce, to be utilized merely for the provision of consumer goods to benefit the more financially and intellectually advantaged members of the community. It will have been demonstrated that each member of society is to be respected unconditionally as a member of the human family, and to be treated with compassion and dignity.

Not all the disadvantaged will be grateful and reciprocate; some may be oblivious to all efforts to help them, others will be anti-social and destructive. This does not exempt us

from our responsibilities both individually and collectively, to be committed to the unwanted, neglected, mentally and physically ill, indeed all marginalized members of society, and to identify with them all the days of our lives. This thesis will reflect that commitment and belief.

FOOT NOTES: CHAPTER ONE

1. Change in medical thinking may be said to have begun during the Renaissance Period. The dream of Renaissance humanists had been to restore medicine to its original pre-Galen Greek concept of purity (Porter, 1997:201); that is, patient centred observations of Hippocrates combined with the scientific methodology of Aristotle (Porter, 1997:65). Porter has further stated that by the seventeenth century, a counter humoral view supporting the neo-Aristotelian movement gained ground, believing that medicine could only thrive if it discarded past concepts and practices inherited from Galen. In this challenge, the 'revolutionaries' sought an analogy with the Reformation movement. What Luther had achieved in breaking with Rome, they believed they could achieve in reforming medicine (Porter, 1997:201). The leader was Paracelsus (1493-1543), and the changes he instigated were developed, fought over, and became centres of controversy over the next two centuries. There were divisions in medicine itself, between the traditionally educated university physicians, who were for the most part supporters of Galenism, and wished to preserve their monopoly, and the apothecaries, surgeons and other 'hands on' practitioners who were increasingly turning their attention to the newly developing sciences, and championed the neo-Aristotelian approaches to the study of nature, especially comparative anatomy and physiology (Porter, 1997:209).

In 1628, William Harvey (1587-1657), successfully demonstrated the circulation of the blood in the human being. Harvey had studied at Padua University, where neo-Aristotelian ideas were challenging Galenic concepts. Samuel Wood, writing in Structures on the Gout (1775), looked back over the previous two thousand years and deplored the unenlightened state of the ancient Practitioners, with whom 'all was merely conjecture' (in Porter, 1997:245). He asserted that 'there could be no Physiology before Harvey's discovery of the circulation of the blood.' (Porter, 1997:245) Other brilliant break throughs in Anatomy and Physiology followed, and despite the negative aspects of the forthcoming Industrial Revolution, which will be considered in the following chapters of the thesis in relation to mental health care, the new philosophical view of progress by Enlightenment intellectuals was that better times were coming and could only get better. Reason would create a better future, while science and technology as the Elizabethan, Francis Bacon, had taught, would enhance man's control over nature. The conquest of all types of disease would follow (Porter, 1997:245). It is believed that it was within this context of the new thinking of a 'medical science', that Foucault described our inability to understand previous, eighteenth century thought processes as a 'fantasy'.

2. It may be argued that, within Talcott Parsons' framework, those who have acquired a drug habit through early exposure at home, to, for example, usage by parents, or through peer pressure, and who make an effort to break the habit, are legitimately ill. Those who deliberately expose themselves to the dangers of drug addiction and make no effort to break the habit, would be seen as illegitimately ill. This ignores the fact that those who spiral downwards into deeper addiction, are often incapable of coherent thought at that stage; they are overcome by their craving to satisfy the need. Are they not to be considered as in need of health care, but to be classified instead as felons?

3. The following example was experienced by the writer within an English psychiatric teaching hospital, of a patient aged thirty four years of age, with chronic personality disorder following severe brain abscess suffered during his adolescent years. He was a pleasant, courteous and charming individual with an acute and sensitive ear for the nuances of people's accents. He would quickly ascertain which country the speaker

came from, and having studied the geography of Sydney, Melbourne and the main Canadian cities over the years, would launch into a heartbreaking account of his life as a Battle of Britain pilot. His subsequent marriage resulting in three children would be described. His wife, he would assure his audience, had divorced him while he was recovering from the effects of a horrific 'plane crash. She had subsequently taken his children to live in Sydney/Melbourne/Toronto-whichever locality happened to be relevant to the moment. He had been incarcerated in the hospital as a result of his wife's machinations.

This account would leave the sympathetic audience outraged over his being denied his human rights, and demanding justice for the injured patient. In fact, he had never left the city in which he was now hospitalized. His father owned a market garden in which the son had also been employed until his illness. He had never been a pilot, nor had he been married; he had no children. He had no connections with overseas cities, but his great penchant was driving cars. He did not possess a driving license, had no idea of the Highway Code, but could 'hot wire' any make of car- only he preferred it to be in the luxury range, such as a Rolls Royce, Mercedes or Porsche. If given freedom, he would 'acquire' one of these cars, drive it up the M1 Motorway at maximum speed on the wrong side of the road in the fast lane. He had never so far sustained injury, but had effectively destroyed each car he had driven. For his own and for the community's safety, he was committed to the psychiatric hospital, using his gardening skills, and enjoying a relative amount of freedom

CHAPTER TWO
 CONTRASTING CONCEPTS OF JUSTICE ARISING OUT OF TRADITIONAL
 (NATURAL LAW) AND ENLIGHTENMENT PHILOSOPHICAL VIEWS:
 THEIR SIGNIFICANCE FOR MENTAL HEALTH CARE

1. Introduction: The aim and overview of the chapter.

The aim of this chapter is to analyze and critique the concepts of justice and social justice as they have influenced mental health care, by comparing the variety of interpretations and perspectives given to these concepts during times of change over the past two hundred years, against whatever philosophical view was currently prevailing .

The whole question of justice is difficult to describe and to promote currently, because we live in a time when there are many different views of philosophy, mostly Enlightenment and post Enlightenment views, each opposed to the other. In order to explain the present philosophical situation, MacIntyre in After Virtue, 1985, has used the analogy of the effects of abolishing science teaching in schools and universities (1985:1), and has suggested in the future imaginary world, the language of natural science would continue to be used but in a grave state of disorder (1985:2). MacIntyre states that should such state of affairs occur, analytical philosophy would never reveal the fact of the disorder, because :

“The techniques of analytical philosophy are essentially descriptive and descriptive of the language of the present at that.” (1985:2)

In a later reaction to this movement, people might attempt to revive the science, but would only be left with fragments of the former knowledge. The scientists would build these pieces of information into what they would name physics, chemistry and biology, but which, in fact, would bear no resemblance to the original disciplines. MacIntyre poses the question: if this catastrophe did happen, would not any historical records show this occurrence? He answers this by postulating that it might be of such a nature, that people did not recognize at the time that what was happening was indeed a catastrophe (1985:1-3). This situation is likened to the present philosophical dilemma that exists throughout the Western World. The catastrophe which MacIntyre sees as the rejection of traditional philosophy: the nexus between Faith and Reason, took place immediately before the onset of the Enlightenment period which ushers in the Modern world. Consequently, modern philosophical theories which had their foundations in the Enlightenment period, do not seek

anything further back in time, believing there is nothing there to be learned (MacIntyre, 1985:1-5).

This explains why, as stated in Chapter One, the Enlightenment philosophical theories are understood as having provided the basis for mental health care throughout the past two hundred years; that is, the period during which asylumism existed. In Chapter One, the time frame-1800 until the present time- was established for the thesis, because many historians and sociologists, bearing out MacIntyre's analogy with the abolition of science teaching, believe that at the end of the eighteenth century and beginning of the nineteenth century, a transformation occurred from the Classical Age to the beginning of the Modern Age (Scull,1993:56-7; Shorter,1997 1-3; Foucault, 1972: 40). This transformation has been described as a 'rupture of knowledge' or an *episteme* (Pearson, 1975:146), which itself was depicted by Foucault as a space of knowledge in which thought can take place (Foucault 1972: 40). It is impossible, therefore, to enter into dialogue with the rationale of medical treatment before the dawn of the Modern Age (Pearson 1975:147). This premise was discussed in Chapter One (Pages 3-4).

In order to understand how the concept of asylumism came to be implemented as an acceptable milieu for the mentally ill, and to decide whether such institutionalization provided justice and social justice for the inmates, it is necessary to understand the philosophical views which conditioned people's thinking, and were prevalent at the beginning of the nineteenth century.

By the end of the eighteenth century, Enlightenment philosophical theories predominated in England, North America and most of Europe. (1) It will be shown in Chapter Three, that asylumism was also exported by the British at that time to the newly discovered Australian continent.

In Chapter Three, it will be explained how Enlightenment theories interacted with the many social, political and economic changes occurring at that time, and would all contrive to bring about the Industrial Revolution. The paradigm shift from a predominantly agricultural way of life to an industrial world, would affect the entire Western way of living, and would drastically alter the treatment and care afforded to those who were unable to participate as active members for the ever increasing demands of the workforce.

The influence of anti-Enlightenment theories upon protagonists for the demise of asylumdom at a time of great political and social change following World War II, will be the subject of Chapter Four.

Within current moral issues of today, there is an inconsistency in delineating principles. Descendants of Encyclopaedists holding Enlightenment views which extol belief in the use of reason only, as well as Genealogists who assert relativism, may nevertheless demonstrate belief in some aspects of traditional, more Aristotelian and Christian views of justice (MacIntyre, 1985:171). MacIntyre suggests this is a tribute to the residual power and influence of tradition (1985:252). In a country such as Australia, therefore, with a plethora of cultures, with communities having affinity to their own social mores, there will be in addition to those with strong ties to Eastern culture and philosophy, Irish-Australians with strong bonds to tradition, those of Protestant descent with adherence to Enlightenment philosophical views and a strong work ethic, those of no or agnostic persuasion who more easily accept Genealogist interpretations including relativism. There are also probably mixtures of all of these.

This inconsistency may be demonstrated in the often vehemently contested debate over the issue of pro-abortion versus anti-abortion. In such a situation there can be no consensus on moral issues. (2) The pro-abortionists are demonstrating a belief which could be construed as being in accordance with Nietzschean philosophical views, while the pro-life opponents are demonstrating a belief similar to the value system of Natural Law; both theories will be discussed later in this chapter. (3) When such a situation arises, where each group is following firm philosophical beliefs, this is not to deny that there may be many 'pro-choice' activists who would be philosophically opposed to Nietzschean morality. In such an atmosphere of strongly held convictions, often an impasse is reached, and confrontation is resorted to. How can justice be given to both parties, since in each case it is founded on conflicting principles?

In considering these two opposite views, the Principle of Charity needs to be applied. That is, a principle of interpretation which basically holds that one's interpretation of another speaker's words, should minimize the ascription of false beliefs to that speaker.

This is a maxim proposed by the American philosopher Quine (Mackie in Honderich, 1995:130), and prominent as a principle in the works of Davidson, especially Inquiries into Truth and Interpretation, 1984 (Crane in Honderich, 1995:177). Thus, in considering the abortion debate, one ought not to ascribe to the pro-abortionists a disregard of human life on their part. Nor ought one accuse the anti-abortionists of an indiscriminate fecklessness with regard to human procreation. The debate must remain at a level of debate, not being allowed to deteriorate to a level of shrill vituperance.

This disagreement and the ensuing arguments resorted to, lay bare two key concepts: those of incommensurability and untranslatability, (4) that is, they do not have a common quality upon which to make a comparison, nor a basic language which may be translated. They raise the issue of how universal or general justice may be offered to satisfy both groups. The language remains the same, rather the problem is in the issue of the terms.

In such a situation there cannot be consensus of moral interests. What will be shown in the thesis, is that the ‘tradition of the virtues’ is at variance with the individualism especially of the modern economic order, its acquisitiveness, and:

“...the elevation of the values of the market to a central social place.” (MacIntyre, 1985: 254)

While rejecting the standards of the modern political order, this does not mean that one rejects the rule of law. Many tasks have to be performed through governmental instrumentalities. Each particular situation, however, has to be dealt with and evaluated on its own merits; social justice is one such task. It requires a twofold thrust from governmental support, and individual effort by members of the community so that justice needs may be more adequately met, and the common good of all citizens may be obtained. The ‘common good’ is part of the value system of Natural Law, and will be discussed from page 71 ff.

The present philosophical situation is important when considering justice for the mentally ill, because the interpretation of what is social justice may vary from one professional group to another, according to the group’s philosophical view. Within the Australian community in which the mentally ill now find themselves, there may be many cultures as described above, several of which are demonstrating differing philosophical views: all are in need of social justice. While the leading moral arguments have expert spokespeople articulating them, such as the Pope or other prominent but dissenting philosophers, it is

within the milieu of the media, in social discussions and everyday activities that the arguments are distilled, interpreted and acted upon, often in a disturbing, shrill and confrontational manner. They often imply the philosophical theory of emotivism; that is, a doctrine that all moral judgments are nothing but expressions of preference or feeling (MacIntyre, 1985 :11-14).

The emotive theory argues that the emotive element is the ultimate basis of approval.

R.W. Hepburn has stated that, within this context, the language of moral judgment expresses the speaker's emotion and evokes the hearer's (in Honderich,1995:225). Using such a theory it can be argued that moral judgments, being expressions of attitude and feeling, are neither true nor false; they are relative, and may accordingly be a matter of 'choice'.

For the mentally ill, during acute episodes of their illness, unsure of their feelings or even devoid of them, such an argument is unhelpful. In their own periodic inadequacy to cope, even with the management of daily living skills, when they may be unsure of their own actions and of their motives, they need to be able to depend on a normative value system on which there is consensus by society, and in which they may trust to help them; a system which gives them stability.

To expect the mentally ill person, perhaps recently discharged from hospital after an acute episode of a specific illness to make 'choices' of lifestyle, of behaviour, of half remembered daily living skills, is violating the integrity of that human being, and is offensive to human dignity, in that 'choice' is intended by its very definition to be an 'informed choice,' something which at this stage, the recovering mentally ill client may be unable to make. The word 'client' is used here and throughout the thesis quite deliberately, against the writer's preference for 'patient', because it has passed into mandatory use within the mental health service. Theoretically it is intended to promote 'mental health' as opposed to 'mental illness', and also 'empower' both 'client' and 'patient' by ceasing to use the psychiatrists' terminology of 'patient,' thus breaking the supposed 'paternalistic' grip by psychiatrists over psychiatric health care, which many health professionals imagine exists. For several reasons this language is regrettable, the main one being that the term 'client' stresses the impersonal contractual nature of a patient's relationship to 'carers'.

Furthermore, it adds linguistically to desensitization in respect to the category of 'suffering'.

A.R. Jonsen SJ. writing of Responsibility in Modern Religious Ethics, has stated that the notion of 'choice' is central to ethics (1968: 35-70). Jonsen has reported Aristotle as declaring that:

"Choice is intimately related to virtue and is a better criterion of character than action." (1968: 35-70)

Choice implies that alternatives present themselves, and there is full awareness on the part of the individual, of the possible results of the course of action intended to be undertaken. To pursue a choice in this context, implies the distribution of responsibility in which six notions figure prominently. They are: intention, motivation, deliberation, voluntariness, excuse and character (Jonsen SJ. in Fagothey SJ. 1972:24). (5) It is argued that, when 'choice' is analyzed within this framework, for many recovering mentally ill clients, some of the necessary elements are missing. Intent implies that one has given consideration to the alternatives resulting from one's actions. It implies recognizing the criteria of right or wrong moral judgments, making a commitment to undertake whatever decision has been confirmed. Without the necessary ingredients to make an informed choice, the mentally ill individual is often unable to do this. To expect such action as 'commitment' from making a 'choice' is, therefore, in these circumstances, placing an unrealistic burden on the client's already fragile shoulders. Within this context, 'choice' is an essentially existentialist viewpoint. Sartre has written that:

"Man being condemned to be free carries the weight of the whole world on his shoulders: he is responsible for himself and for the world as a way of being." (In Fagothey, 1972:39) (6)

The quarrel here is not with the concept of emotivism. It is the fact that 'choice' is an unfair responsibility for the mentally ill, recovering or otherwise, to be expected to undertake. The need of stability, therefore, is crucial to the whole enterprise of providing social justice for the mentally ill. The significance of stability through the effects of instability is reflected in the document *Gaudium et Spes* at the Vatican II Council of 1963:

"Whatever is hostile to life itself...whatever violates the integrity of the human person...whatever is offensive to human dignity.... such as...subhuman or work conditions...all these and the like are a disgrace." (*Gaudium et Spes*, Vatican Council Papers.1965:27)

It is against this background and the significant effects of predominating philosophical views current at the time under scrutiny, that the chapter has been developed. Because

Chapter Two is devoted entirely to the subject of philosophical theories affecting justice and social justice for the mentally ill, and spans the period of over two hundred years, it is inevitably a lengthy chapter. Because of its nature, the material needs to be contained in the one chapter which, for ease of management and reading, has been divided into two parts. In Chapter Two A, Enlightenment theories of justice, together with anti-Enlightenment theories including Postmodernism are discussed in relation to their significance for mental health care during the time span of the thesis, namely, 1800-2004.

In order to address current problems affecting mental health care later in the thesis, and to offer a contrast to Enlightenment theories which have controlled mental health care for over two hundred years, Part B of the chapter will contain the philosophical theory of Natural Law as described by John Finnis, although it has been untried by politicians and economists during the past two hundred years. This theory utilizes Aristotelian-Thomistic understanding of ethics and morality. It will be used to compare Encyclopaedist and Genealogist viewpoints, (7) and to explain social justice principles from the Natural Law and Enlightenment perspectives. In addition, a Natural Law model will be constructed, based on Finnis's theory, in order to compare and contrast historical mental health practices described in Chapters Three and Four, to consider current mental health care practices as described in Chapter Five, and to analyze and plan mental health care in accordance with social justice principles.

The chapter is developed as follows:

Chapter Two A

1.Introduction. The aim and overview of the chapter.

2.Contrasting theories of justice arising out of the Age of Enlightenment (the Age of Reason), and historically relevant to mental health policy making and mental health care:

-Considerations of Utilitarianism in relation to mental health care and social justice for the mentally ill.

-Significant contrasts briefly outlined between Libertarianism, Egalitarianism and Communitarianism, with regard to the needs of the mentally ill.

3.Moral arguments of the Genealogists and their relevance to justice and social justice for the mentally ill:

- A brief revue of Marx and the Enlightenment in relation to justice and social justice for the mentally ill.
- Nietzschean influences affecting mental health care and social justice.
- Post-Nietzscheanism: Michel Foucault and post-Enlightenment theory influencing mental health care.

Chapter Two B

4.A theory of Natural Law and Natural Rights as described by John Finnis, and related to the concepts of justice and social justice for the mentally ill. Construction of a Natural Law Model in accordance with Finnis's theory.

5.Principles of social justice as interpreted by Enlightenment theorists (the Encyclopaedists) and their significance for the mentally ill.

6.Conclusion.

Appendix.

Clarification of the relationship between the philosophical views outlined in Chapter Two and the ethics of social justice.

CHAPTER TWO: A

2.Contrasting theories of justice arising out of the Age of Enlightenment (The Age of Reason) and historically relevant to mental health policy making and mental health care.

There are formal or material principles of justice, which are used by those whose philosophical views do not subscribe to Natural Law.

-Formal justice.

This principle has been attributed to Aristotle: that equals must be treated equally, and unequals must be treated unequally (Beauchamp and Childress,1994:328). This principle does not state the particular respects in which equals are to be treated equally, nor does it provide criteria by which to determine whether individuals are equal. There is no

definition provided for the term *equal*. The interpretation can affect mental health care (8) in that to treat the mentally ill in, for example, matters of distribution of benefits and burdens, in the absence of a justification, is a paradigm of injustice. Surely, the burden of justification should be strong enough so that a reasonable case might be made for protecting the rights of those less favoured by distribution, and regulating the distribution of social advantages such as community living and economic assistance, thus enabling the mentally ill to live full and satisfying lives.

-Material Principles of Justice

These principles specify the relevant characteristics for equal treatment, and identify the substantive properties for distribution (Beauchamp and Childress, 1994:329). This does not imply that all needs have to be answered by distributive justice-only the fundamental needs. That is, without that particular need being answered, the person may be harmed. These principles of justice have been criticized by philosophers such as John Stuart Mill, in Utilitarianism (1861, Chapter 5), and John Rawls in A Theory of Justice (1972), who both argued that abstract material principles of justice are of little help until they have been integrated into a theory which is an attempt to:

“Govern the assignment of rights and duties and to regulate the distribution of social and economic advantages.” (Rawls, 1972:61)

Several theories of justice other than that of Natural Law have been developed during the past two hundred years. They may be applied in describing how health care goods and services should be distributed. They all have different criteria with specific emphasis on differing strategies, but all are significant for the relationship of social justice to mental health care policy and implementation. The most significant are: Utilitarian, Libertarian, Communitarian, Egalitarian theories, and are contrasting theories of justice arising out of the Age of Enlightenment: a time of great economic, social, political, and philosophical change. These changes will be addressed in the next three chapters of the thesis.

Kant, the Enlightenment philosopher was to suggest as the motto for the Enlightenment era: *Sapere aude*-‘Dare to know’ (Gay 1969, Vol:1). Indeed one of the characteristics of the period was not only the break in the nexus between faith and reason, but the substitution of a belief in reason as a faith in itself-a faith in the human being’s competence to know, to do, to achieve by him/herself, without any divine intervention.

This implied a faith in progress, which may be related back to a series of important accomplishments especially in the second half of the seventeenth century. Lord Shaftesbury had written of 'lightbearers' who were illuminating thought, especially in England and Holland (Gay 1969, Vol 2:56). (9) These men built on to a new theory of scientific knowledge which had been described by the Elizabethan, Francis Bacon (1561-1626), and was based on observation and experiment. This theory came to be known as the inductive method-a scientific method. In the newly developing scientific medicine, a scientific method would be used from the nineteenth century onwards, to organise medical knowledge and practice. (10)

Man had acquired a profound confidence in himself to be able to accomplish anything using his own critical reason as an infallible guide. This would explain why Enlightenment ideas were introduced successfully into every area of culture. The present could always in future be compared with the future, and the future would be found, (although unproven) to be better and advanced beyond the earlier (Goudzwaard, 1978:38). This complete belief in reason led to man's self-actualization, in which Paradise is not a metaphysical belief but a reality to be founded on earth, through progress (Dawson, 1929:13). (11)

The French Enlightenment is not a reflection of Christian belief: it may be viewed as an anti-Christian belief. In England and Germany, the same vehement resistance to the deity is not present. Traditional thought may be seen to have been so strong in those regions, that the radical characteristics of the Enlightenment were tempered. The effects, however upon the official Christian State religion in England were to render it into:

"...an insipid religion of virtue and immortality at the beginning of the Industrial Revolution." (Goudzwaard, 1978:45)

It will be shown in Chapter Three, that this had a direct bearing on the development of Wesleyanism which blended well with the tenets of Classical Utilitarianism, influenced the attitudes of the workers, and encouraged their acceptance of their lot in life- a lot which in many instances, was in direct conflict with the tenets of social justice. Part and parcel of the Enlightenment creed are two indispensable allies: growth in progress, and scientifically founded technological progress. Sebastien Mercier asks rhetorically:

"Where can the perfectibility of man stop, armed with geometry, and the mechanical arts and chemistry?" (Bury, 1920 in Goudzwaard, 1978: 51-52)

Such thinking in France, implied a need for concrete revisions in existing social and political order. **(12)**

For approximately two hundred years following the period of the French Revolution, Enlightenment views directed political and socio-economic life in the Western World. Natural Law, which Enlightenment philosophers had for the most part displaced, had involved a metaphysical approach. **(13)** The Encyclopaedists, eschewing a metaphysical foundation had believed that the human being was capable of a moral standard using Reason as his/her personal conscience guide. The Ten Commandments, without being explicitly stated as the moral foundation for society, now became the social mores by which the community's accepted standards were lived (Sacks,1997: 113-4).

-The Aims of the Enlightenment.

They may be summarised as:

- Intellectual freedom is essential; therefore dispense with the shackles of religious intolerance and obscurantism.
- Adequate education is vital to provide for competent reasoning.
- Love and compassion must exist for humanity.
- Brutalities of law are to be attacked and assailed.
- Sympathetic understanding of the mentally ill is to be encouraged.
- Protestations are to be made against the practice of slavery.

(Nussbaum *et al* in Langer W. ed. The Rise of Modern Europe Vol 5-10, sources for Benton W. *et al* Encyclopaedia Britannica Vol.8 1968: 599-603).

It was one of the prevailing Enlightenment aims manifest as 'kindness' which resulted in 1795, in Pinel's removal of chains and manacles which had confined the insane within the Salpetriere. Independently, in York, UK. William Tuke, a Quaker treating Quaker patients within his own house, instigated the treatment of 'moral therapy', in which the insane were treated with kindness and gentleness, not force. These were unusual methods at that time (Shorter, 1997:11-21).

There was then, much to be commended in the Enlightenment view, as well as many practices to be deplored and discouraged. The idea, for example, of a personal conscience not requiring external guidance is seen by both MacIntyre and Finnis as unwise, (Finnis, 1980:125, MacIntyre, 1990:134), and personified one of the problems facing the

Enlightenment. Employing personal conscience, many philosophical views consequently flowed from that period, with philosophers often promoting contradictory ideas as will be shown below.

In Catholicism, there are many who adhere to the notion of ‘primary of conscience’. The problem in considering traditional versus Enlightenment views on conscience, is not so much with conscience itself, but with what is meant by it. The Enlightenment version may be argued to be individual, autonomous and rational or emotivist; the traditional method is ontological. Herein lies the central difference.

-Philosophers of the Enlightenment and their related theories of justice in relation to social justice and mental health care.

Within this thesis, only those philosophers whose works have or have had a particular relevance to mental illness are referred to. This thesis is not a pure philosophical dissertation *per se*. The observations concerning philosophers whose views are considered relevant to mental health care, are to be viewed as ‘snapshots’, simply outlining their significance at that time in history and to the treatment of the mentally ill. There is no attempt to discuss them ‘in depth’.

The philosophers of the Enlightenment Age came to be known as ‘Encyclopaedists,’ after a group of eighteenth century writers who collaborated in the compilation of the ‘Encyclopaedia.’⁽¹⁴⁾ Some of the predominant philosophers whose thinking would affect the mentally ill were: Henry Sidgwick, Immanuel Kant, John Stuart Mill, John Locke, Jean Rousseau, Rene Descartes and Jeremy Bentham. Those of more recent times include Robert Nozick, John Rawls, Michael Walzer and Michael Sandel. Although this is a wide variety of philosophers, extending over almost four hundred years, they have been specifically chosen, because of the significance of their influence on the concepts of, for example society, justice, liberty and mental illness itself, as will be shown in the following pages. The significance of Descartes to the establishment of psychiatry as a branch within the discipline of medicine will be discussed in Chapter Three, while discussion concerning the influence of Sidgwick, Bentham, Nozick, Rawls, Walzer and Sandel will be undertaken in relation to the theories with which they are associated.

- Immanuel Kant: (1724-1804), an eminent philosopher of the Enlightenment period,

believed that all human beings possess the ability to choose between good and evil, because they possess freewill. (15) It was in the third phase of Kant's philosophical career that *inter alia*, he wrote: The Critique of Pure Reason (1781), The Critique of Practical Reason, (1788), and The Metaphysics of Morals, (1797), (Honderich, 1995:556). They have significance for mental health care and social justice.

Kant emphasized, also, respect of persons as a moral basis of society, and believed that these general principles of the universal law of respect for persons, and respect for persons as the moral basis of society, could form a foundation for the development of the structure for social justice (Kant, Political Writings, in Theophanous, 1991:26). Kant argues that moral judgements are expressions of practical as distinct from theoretical reason. For Kant, 'practical reason' does not derive its principles from examples of the senses or from 'theoretical reason'; it finds its principles with its own rational nature (Bird G. in Honderich, 1995: 438). This ability to use practical reason to generate principles of conduct, Kant calls 'the autonomy of the will' and sees it as constituting the dignity of a person.

The fundamental principle of respect for persons is based on a metaphysical view that the human being is distinguished from other things in the universe by his/her capacity to make decisions and to change things in the world according to his/her will (Theophanous, 1994:24). Kant's philosophy holds good for all in contact with the mentally ill. There is a necessity to treat them as people, not to be pitied, nor patronised, but recognised as having an equal value as members of the human family with everyone else in the community. The substantial content of this law can be stated as: the maxim: 'Do not do unto others as you would not have them do unto you.'

It is the theories Kant described during the third period of his philosophical career that resulted in his development of maxims. To determine what our duty is, Kant asserted that principles must be established, and to this end, he introduced the notion of a maxim, that is, the principle on which the agent, as a matter of fact acts, and which sums up his/her intention (Hamlyn, in Honderich, 1995:556). The maxim 'do not do unto others what you would not have them do unto you' bears out the seventh requirement of practical reasonableness on which rests, according to Finnis:

"...the strict inviolability of human rights." (1980: 121)

This concept of treating people as ends in themselves rather than as means, Kant asserts is an act of self-determination guided by reason, sometimes drawn towards self-interest, and sometimes towards a moral duty-that which is right (Theophanous 1993:25). The modern State has made use of Kant's thinking, together with others, in relation to the moral equality of people, social rights, human rights, rights of special groups in their attempts to formulate a just society. Kant is, therefore of great significance to mental health care principles. Criticism of Kantian Theory as evidenced by Nietzsche and his fellow genealogists will be discussed on pages 52-53 and **fn (64)**.

- Jean-Jacques Rousseau: (1712-1778) was influenced by the work of Kant and agreed with Kant that all persons have an intrinsic moral worth. Rousseau saw the central problem of human society as an attempt to find a form of association which would defend the person and good of each member with the collective good of all, and under which individuals while uniting themselves with the others, would obey no-one but themselves and remain as free as before (Flew 1984:307). In an attempt to determine an answer to this problem, Rousseau formulated his Social Contract, whereby we invest power in ourselves, that is, in the people as a whole, considered as a collective entity (Flew, 1984: 307). **(16)** Such self-determination was going to be beyond the reach of many of the mentally ill who would be unable to understand Rousseau's concepts.

- John Locke: (1632-1704) made an impressive contribution to the philosophical view of the State. His application of the mechanistic rules formulated by Isaac Newton, and which appeared to govern the physical universe, were used by Locke to destroy the remnants of belief in the divine right of kings, and to construct a mechanistic theory of State which led to the separation of powers in government between the executive, legislature and the judiciary (Buchanan, 1979:103). **(17)**

While John Locke was also to formulate a 'social contract', he did not recommend Rousseau's impractical desire that all should participate in decision making (1971). Locke believed in the human being's right to freedom, life and liberty, so long as others' rights are not infringed-a vague idea where the liberty of the mentally ill was concerned (Flew, 1984:207). Locke is believed to be the first political philosopher to propose the principle that government is by popular consent, and is contingent upon a commitment to protect liberty (Robertson, 1999:4).

- John Stuart Mill: (1806-1873) echoing Locke's sentiments, Mill was to write:

The sole end for which mankind is warranted...in interfering with the liberty of action of any other members is self-protection. The only purpose for which power can rightfully be exercised over any other member of... a civilized society is to prevent harm to others. (Mill new ed. 1962 :72-3)

This statement will be seen to have had serious implications for deciding the liberty of the mentally ill and the rationale for institutionalizing them during the end of the eighteenth and beginning of the nineteenth centuries. Out of the philosophical views espoused by these and other philosophers of the Enlightenment, would be formulated the main theories described below, all of which have influenced mental health care during the past two hundred years.

-Utilitarian Theories.

These emphasise a mixture of criteria in order to maximise public utility (Beauchamp and Childress, 1994:334). Of all the Enlightenment theories, the most influential with long lasting effect on politics, economics, mental health policy and health care has been Classical Utilitarianism. It became probably the most famous normative ethical doctrine in the English speaking tradition of moral philosophy, designed to explain why some actions are right and others wrong. **(18)** Utilitarianism is still accepted as one of the major theories of ethics and is politically influential today, although its heyday in its classical form was undoubtedly from the eighteenth through the nineteenth centuries. Its exponents were Jeremy Bentham (1748-1842), John Stuart Mill (1806-1873), and Henry Sidgwick (1838-1900). **(19)**

-John Stuart Mill was to write of:

"The creed which accepts as the foundation of its morals that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness." (In Flew, 1984: 361)

-Jeremy Bentham, however, espoused a different interpretation of Utilitarianism from that promoted by Mill. Bentham saw the community as a 'fictitious body' and community interests as nothing more than:

"...the sum interests of the several members who comprise it." (Bentham in Johnstone, 1995: 86)

Mill, however, was adamant that the ultimate standard of utility is not the individual's own greatest happiness, but the greatest amount of happiness altogether (Johnstone, 1995:87). It will be shown that it was this Classical Utilitarianism that prevailed as Benthamism, and influenced the sequestration of the unemployable into institutional life. This theory has been divided in recent years into 'Act Utilitarianism' and 'Rule Utilitarianism.' **(20)**

Bentham's philosophy of the greatest good for the greatest number would include everyone in the calculation, but some would not count as much as others. (21) Jeremy Bentham used Classical Utilitarianism as both a philosophy and a political strategy to change political and bureaucratic structure in England at the beginning of the nineteenth century. The Enlightenment had sought on one hand to show the individual moral agent:

"freed from hierarchy and teleology conceives of himself and is conceived of by moral philosophers as sovereign in his moral authority." (MacIntyre, 1985: 60)

On the other hand, the inherited, albeit partially transformed, rules of morality had been deprived of their older teleological character and ancient categorical character as expressions of a divine will (MacIntyre, 1985: 60).

The first project lends its importance to Utilitarianism. Bentham believed he was assigning a new status to moral rules and giving a new meaning to key moral concepts. These are that the only motives for human action are attraction to pleasure and aversion to pain. MacIntyre states that Bentham made the transition from the psychological thesis (mankind has only two motives) to his moral thesis that out of the alternative actions between which we have to choose at any specific time:

"We ought always to perform that action...which will produce as its consequences the greatest happiness-that is, the greatest possible quantity of pleasure with the smallest quantity of pain- of the greatest number." (1985:61)

Benthamism falls short of Finnis's Natural Law and Natural Rights theory, which espouses 'the common good' (Finnis 1980:36). The point to Finnis, is the incommensurability of human goods. They cannot be weighed and measured in the way the Utilitarian supposes.

It was Bentham's view that the enlightened and educated mind which recognizes the pursuit of happiness dictated by pleasure-seeking pain-avoiding psychology, will coincide with the pursuit of the greatest happiness of the greatest number (MacIntyre, 1985: 61). John Stuart Mill contended, however, that Bentham's concept of happiness needed enlargement. Mill attempted in Utilitarianism, to distinguish between 'higher' and 'lower' pleasures, and in On Liberty, Mill connects increase in human happiness with the extension of human creative powers. Mill suggested through these deliberations that the notion of human happiness:

"Is not a unitary simple notion and cannot provide us with a criterion for making our key choices." (MacIntyre, 1985:63)

Pleasure that we may experience in reading a book, is not necessarily the same pleasure obtained from meeting a friend after a long absence. The happiness we enjoy when receiving an unexpected gift is not comparable with the happiness experienced, for example on winning a small Tattsлото dividend.

A disciple of Adam Smith, Bentham insisted on extreme logical application of Smith's principles of political economy. (22) Smith's views on the eternal nature of the rich/poor relationship, say much of the unconcern with social justice for all members of the community during the Industrial Revolution:

"Wherever there is a great property, there is a great inequality. For one rich man, there must be at least five hundred poor, and the affluence of the few, supposes the indigence of the many." (Vol 2: 170)

This posed the question, what would happen if the poor and unemployable, (such as the mentally ill) became a danger to social order? Bentham provided the answer in professional administration. He believed passionately in the formula: inquiry, legislation, execution, inspection and report (Scull, 1993:86). Bentham was the quintessential professional administrator and the forerunner of a particular breed of senior Civil Servant who would emerge as the expert bureaucrat to administer the British Empire. (23)

In promoting central government, Bentham advocated surveillance. Those 'untidy areas' of society: the unproductive mentally ill, and others incapable of work, would be 'tidied up' into institutions where their actions would be carefully monitored. With their supreme confidence in the ability of the human race to ever improve the human being's condition, Utilitarians intended within the institution, to rehabilitate the mentally ill, and return a reformed individual to the community to be incorporated into the workforce. The problems encountered in attempting this process will be discussed in Chapter Three as will the uniformity which institutionalization produced, to see how much it threw into jeopardy the provision of social justice for the mentally ill.

In Australia, Utilitarianism would be demonstrated most notably in the bureaucracy of Tasmania, presided over and managed by *et al.* Governor Arthur, an Evangelical follower and a Utilitarian (Younger, 1982:128-130). (24) Justice meted out to the first English settlers in Australia will be considered in terms of social justice in Chapter Three.

-Recent changes to Utilitarian Theory.

The original theories advanced by Bentham and Mill have been elaborated and rendered more sophisticated today. Johnstone has suggested that this is mostly because of the inadequacy of the original hedonistic theory to determine right action ‘objectively’ (1994:87). The main alternative view to Classical Utilitarianism, is that of ‘Preference Utilitarianism’ (25) of which R.M. Hare is the main proponent. The same criticism of ‘Preference Utilitarianism’ is offered as before by Finnis: values cannot be quantified. Furthermore, it is argued that commonsense and past experience will not insure that people’s past experiences will cause them to reject ‘undesirable performances’. (26) Trying to provide an impossible net result to the outcome of one’s actions for the greatest number, is not the same as providing for the common good, where each member of society has an individual responsibility to support, care for and consider, the other members of society.

The implementation and maintenance of Utilitarianism in any of its guises, has obvious implications for the administration of justice and social justice. It has been suggested that Utilitarians commonly see justice as involving trade-offs. Beauchamp and Childress (1994:335), have stated that one of the disadvantages of a Utilitarian approach is that it neglects considerations of justice that focus on how benefits and burdens are distributed, apart from aggregate welfare. It would be possible using Utilitarian theory to maximize social utility by not providing access to health care for a vulnerable population of society, such as the mentally ill. The significance of Utilitarianism to the rise of asylumdom will be discussed in Chapter Three.

Other Significant Philosophical Theories arising from the Age of Reason.

These theories include Libertarianism, Egalitarianism and Communitarianism.

-Libertarian Theories. One of the chief exponents of Libertarianism has been Robert Nozick, (1938-2003) whose theories emphasize the rights to social and economic liberty by invoking fairness rather than substantive outcomes. Health care within this context is not a right, and private insurance is upheld (Beauchamp and Childress, 1994: 334-336). According to the Libertarian’s view of a just society, people’s rights of property and liberty are to be protected, but members of society are to improve their circumstances using their own initiative. Nozick argues against the State having a large role in the economy and society if libertarian rights of individuals are to prevail. In his treatise:

Anarchy, State and Utopia (1974:ix), Nozick advocates minimalist government, and attempts to show, for example, that the State's responsibilities should be confined to protection of properties, prevention of fraud, enforcement of contracts and defence against force (1974:ix). Advocates of this philosophical view see wealth as individual in character, and recommend that individuals be given the maximum opportunities of choice and freedom to attain their wealth.

Nozick, then, is showing concern over the encroachment of the State upon the individual by means of the State's nature invested in its authoritarian and paternalistic roles. Further, implications of Nozick's views are that the State :

"May not use its coercive apparatus for the purpose of getting some citizens to aid others, in order to prohibit activities to people for their own good or protection." (1974:ix)

With regard to Nozick's concern with the danger of State coercion, Nozick asserts that:

"Things come into the world already attached to people having entitlements over them." (1974:160)

Finnis sees this as misdirected, and claims that in our world, the natural resources from which all things and objects are made:

"Did appear from nowhere out of nothing, and did not come into the world already attached to people having entitlements over them." (Finnis, 1980:137, n30)

Finnis's viewpoint will be referred to again in Part B of this chapter.

The Libertarian theory is pragmatic and cold, lacking compassion and sympathy for the disadvantaged. Where the mentally ill may be recovering from an acute psychotic episode they are frequently unable to improve their circumstances using their own initiative. They require practical and compassionate assistance, neither of which is evidenced by Libertarianism which shows a lack of fairness and a lack of justice in its theories. (27)

Libertarian views are emphasized because in recent years they have gained the ascendancy in Neo-Conservative philosophical theory, their application forming the lynchpin of the economic rationalism of Thatcherism and Reaganism. They have seriously affected health policy and health care delivery, as will be shown later in the thesis. Some of these philosophical views came from the works of Ayn Rand, especially those expressed in The Virtue of Selfishness (1961), where she maintains that:

"Those who advocate laissez faire are the only advocates of man's rights." (1961: 101)

For the Neo-Conservative/Neo-Right followers, the best way to achieve social justice, is to let the market determine the allocation of resources and wealth. In such an environment while the New Right may argue that there should be a minimum floor of welfare support to prevent starvation, they see any more than a subsistence level as reducing people's inclinations to contribute to society. As Novak states:

The benefits of the welfare state are far too easy to obtain and too attractive to resist. We come to feelthat the state 'owes' us benefits, we are entitled to them as anybody else, and we would be foolish not to take what is so abundantly offered, whether, strictly we need it or not. The welfare state corrupts us all. (Novak M. 1993: 6) **(28)**

The somewhat bald statements attributed to Libertarians have led to condemnation of Libertarianism as unfeeling and unjust to those in need, especially by those espousing an Egalitarian theory. The helplessness of the disadvantaged such as the mentally ill to receive equal consideration when society is unfeeling is obvious. Egalitarian theorists would argue that the motivation behind such a philosophical view, is to disengage the government from the responsibility of providing the production and/or delivery of human services. It also provides an excuse for governments to justify their indifference to providing adequate mental health care. **(29)** Libertarianism has been emphasized, because regrettably, its outcome: economic rationalism is still in favour around the world, and Libertarianism has found favour in Australian Federal and State politics. In such an environment, social justice for the mentally ill is difficult to provide. This will be discussed further in Chapter Four.

-Egalitarian Theories.

These theories emphasize equal access to the goods in life that every rational person values. They propose an equal distribution of some goods such as health care, and carefully avoid making equal sharing of all possible social benefits a requirement of justice (Beauchamp and Childress, 1994: 334,339). One of the most prominent theorists advocating Egalitarianism in recent years has been John Rawls who has described a set of principles which he maintains are the principles of social justice, and which provide a right way for distribution of the benefits of 'social co-operation' (1971:4). It is possible to discern in his explanations, how the concept of social justice may be applied to the structure of modern Australian society. **(30)**

Rawls basis his theory of justice upon a concept of 'fairness' and is concerned with distributive justice presiding over a distribution of primary goods. These are goods which Rawls believes are:

"Rational to want...whatever else is wanted, since they are in general necessary for the framing and the execution of a rational plan of life (and are)...liberty and opportunity, income and wealth, and above all self-respect". (Theory of Justice, 1972:433,253,260,328)

Rawls illustrates his fundamental principles of justice by returning to the heuristic device of philosophers of the Age of Reason: Rousseau and Locke, for eliminating bias, which is described in The Social Contract (Rousseau: new ed. 1958). In this hypothetical situation, Rawls describes how a group of people is brought together to negotiate the principles of justice. This is not a unique situation: it is the basis of social contract theory. Rawls, however, adds a further dimension, by describing a 'veil of ignorance' in the Original Position. The conditions of the Original Position are designed to guarantee that if a principle of justice is agreed upon behind the 'veil of ignorance,' -ignorance by the party as to social status, natural abilities, intelligence, health, then it would be agreed to unanimously, because no-one would know his/her situation in society (Rawls, 1972: 136-140). **(31)**

John Finnis has argued against Rawls's device, in that it does not follow, that a principle chosen in the Original Position would be unbiased and fair among individuals. Further, there is no guarantee that individuals might still not choose an unfair principle or one that in the Original Position might not be a proper principle of justice in the real world (Finnis, 1980: 109). As already indicated, Robert Nozick radically disagreed with John Rawls's theory for other reasons, believing that the State is justified in performing only those functions which may be used against, for example, force, fraud and theft, and for the enforcement of contracts (1974:ix). He rejects all theories of distributive justice, and, specifically, Rawls's theory of justice as fairness (1974: 167-174). **(32)** Finnis's argument that natural resources from which all things are made out of nothing from nowhere, did not come into the world already attached to people having entitlements over them, conditions all entitlements subsequently derived from labour, contribution, purchase or other just sources of private title (Finnis, 1980: 187n30). **(33)** It also implies the responsibility the individual owes to all other members of society (that is, the common good), including the vulnerable such as the mentally ill, and is clearly a part of distributive justice. **(34)**

To Finnis, Rawls's theory remains at a superficial level, and against Finnis's arguments for the need of a philosophical basis of natural reasonableness, some of Rawls propositions appear flawed. **(35)** Rawls does not attribute intrinsic value to the basic forms of good such as truth, play, art or friendship as being objective final ends of human life: to do so would be out of line with his rejection of the principle of perfection and the acceptance of democracy in the assessment of another's excellences (Theory of Justice, 1971: 527). Rawls concedes that:

"The freedom and well-being of individuals, when measured by the excellence of their activities and works, is vastly different in value. ...Comparisons of intrinsic value can be made." (1971: 328-329)

Nevertheless, Rawls will not allow the basic forms of goods already mentioned: truth, play, friendship or art, to enter at all into the rational determination of the basic principles of justice (Finnis, 1980:130n). With regard to the basic form of good: truth, Rawls takes the view that 'something's being good' is its having the properties that it is rational to want things of its kind. The criteria of evaluation differ from one kind of thing to another. Since we want things for different purposes, it is obviously rational to assess them by different features (Rawls, 1971:405-406). Finnis argues, however, that intelligence or reason also evaluates the various different purposes by referring to basic values: things which it is natural to want simply for one's own well-being, such as truth and knowledge of it (Finnis, 1980:76). Rawls does not give any satisfactory reason for the decision to exclude these basic forms of goods. According to Finnis, none is possible; Finnis describes Rawls's 'thin theory' as arbitrary and as a: 'radical emaciation of human good.' (Finnis, 1980:106) **(36)**

Rawls attempts to establish a just social structure identifying four functional elements of government through which, he believes social justice may be supported and maintained (Theophanous 2nd edition:76). **(37)** Rawls's theory revolves around 'fairness', but if this is to be realized, then a far greater range of inequalities must be taken into account than are envisaged in his arguments.

Like Rawls, Nozick draws on the thinking of Kant. The rights espoused by Nozick's minimal state, he sees as just, because they are the necessary and sufficient conditions to affirm Kant's dictum that no one person ought ever to be dealt with purely as a means to the ends of another (Nozick, 1974: 30-33). **(38)** According to Nozick and the Neo-Right, people have equal opportunities to progress to whatever their goal may be. **(39)** Unequal

outcomes merely reflect the amount of hard work and ability that have been put into attaining them. (40) A conclusion may be drawn, however, that too strong an emphasis on the rights of the individual seems to lead to a greater possibility of the abrogation of collective responsibility and obligation to the vulnerable and disadvantaged. (41) It is, arguably, not so much the result of the philosophical view itself, but its application. (42) After viewing the theories espoused by Rawls and Nozick, it remains to be seen if the Communitarians will provide more adequately for the social justice needs of the mentally ill and the marginalized.

-Communitarianist Theory

According to this theory, a society is kept together because there is a shared concept of what constitutes the common good:

“Some communitarians eschew the language of justice and adopt the language of *solidarity* which is both a personal value of commitment and a principal of social morality based on the shared values of a group.” (Beauchamp and Childress, 1994: 338)

Communitarianism, broadly constructed, is a critique of Enlightenment possessive individualism, in particular, the notion of an ‘unembedded self’. Within communitarianism itself, there are two important distinctions: that of social constructionism and Value Communitarianism. Social construction refers to the claim that social reality is contingent upon social relations and human practices rather than given. Value Communitarianism refers to firstly, the commitment to certain values, for example, reciprocity, trust, solidarity. These can only be enjoyed by individuals who are depending on others’ enjoyment. Secondly, there must be a commitment to public goods, facilities and practices designed to help members of the community develop their common and hence their personal lives. Such forms of social construction, such as reciprocity, have been accepted by liberal thinkers, for example, Rawls, while some Communitarian theorists, such as Charles Taylor, have affirmed their commitment to the values of liberalism (Frazer in Honderich, 1995:143).

Essentially, Communitarians have not systematized their thesis as, for example, Bentham has Utilitarianism, or Rawls has Liberalism, nor developed a ‘grand theory’ such as Marxism. Communitarians emphasize the:

“Social nature of life, daily relationships and institutions.” (Frazer in Honderich, 1995:143)

They contrast the embodied status of the individual, as opposed to the focus on an:

“Abstract and disembodied individual (of) contemporary liberal thought.” (Frazer in Honderich, 1995:143)

Whereas liberalism stresses individual rights and the ultimate value of the individual, Communitarianism emphasizes the importance of specifically communal practices. It contrasts with structuralist Marxism and State Socialism which centralize power (Frazer in Honderich, 1995:143). According to Frazer, Communitarians conduct a prescriptive argument that human life will be better if Communitarian, collective and public values guide us (in Honderich, 1995:143). They also mount a descriptive thesis, that the Communitarian conception of the embodied and embedded individual is a truer and more accurate model, having a better conception of reality than liberal individualism or structuralist Marxism (Frazer in Honderich, 1995:143).

Beauchamp and Childress state that Communitarians react negatively to liberal models of society, such as those constructed by Mill, Rawls and Nozick, which all attempt to develop a single theory of justice by which to judge society (1994:337). In contrast, Communitarians see principles of justice as pluralistic, being derived from as many concepts of the good as there are diverse moral communities. Communitarians would argue that the fundamental values which provide for solidarity in society are different for different societies, and that there is no one element which has universal status and application. (43) Theophanous has suggested that this idea can be extended to the different spheres of life in one society (1994:12). (44)

This Communitarian reaction is borne out by Michael Walzer, surveying the ways different societies have distributed their benefits. In Spheres of Justice, (1983) he has argued against both Rawls's and Nozick's universal account of justice linked to society, stating that needs are not facts but values and that specific goods such as education and health care have their own 'internal distributive logic' (1983:113-114). Echoing the theme of Communitarianism, Walzer argues for a concept of complex equality which refers to distributive justice in a number of spheres of life where different concepts of justice would be applicable to different levels of society. Walzer maintains this is necessary, because different rules govern relations between people at different levels. In particular, Walzer subscribes to only three principles of distribution, but the possibility of an infinite number of spheres in which these principles apply. Therefore, this theory gives one a large range of spheres of justice. (45)

During the 1980s, another Communitarian, Michael Sandel, helped start the Liberalism-Communitarianism debate in America, with the publication of his work: Liberalism and the Limits of Justice (Cambridge, 1982). Sandel argued that while Liberalism believes it rests on the assumption that people can, as individuals, choose their ends in life untrammelled by communal ties, in fact certain communal bonds are constitutive of people's identity, beyond choice. These shared bonds should then form the basis for a 'politics of the common good', whereas Liberalism claims a 'politics of rights'. Sandel asserts there can be no such thing as an independent self or a transcendental subject capable of standing outside of society, or outside of experience. Rather, according to Sandel, a study of the individual reveals the pervasive influence of social conditions in shaping individuals and political arrangements (Kymlicka, W. in Honderich 1995:783).

It is emphasized that some Communitarians such as Sandel come very close to Natural Law views, especially with regards to the common good. Moreover, many Communitarians think of themselves as rejecting Enlightenment views of radical individualism. They appear chronologically in the thesis at a time when Enlightenment views are still accepted and acceptable. It would be disingenuous, however, to treat Communitarians as part of the Enlightenment package. All these Enlightenment views imply that each person's conscience will act in a right manner, that individual will towards all neighbours will be 'goodwill', and that law and justice will promote the common good, and social justice, while simultaneously also encouraging personal freedom. (46)

When accommodating the needs of the mentally ill, who may, because of episodic incidences of illness, only be able to work during remission periods, the common good urges the employer to use that person for his/her good periods. It urges other employees to assist that person by offering support, friendship and understanding. From a Libertarian viewpoint, the spasmodic employment of such people is uneconomic. Libertarians pay their taxes, from which government provides money for the health budget. (47) How then, can the principles of social justice be extrapolated from the theories of the Enlightenment, and can they be justified against the social justice principles inherent to Natural Law and to the post Enlightenment philosophical views? These issues will be explored in Chapter Two B.

The Encyclopaedic theories would seem to have serious flaws in their analysis of social justice when applied to mental health care, in that while attempting to provide theories of justice, their interpretations can be applied in ways which negate the intent. These criticisms will be taken forward in considering the role of social justice in relation to the Genealogists.

3. Moral arguments of the Genealogists and their relevance to social justice, mental health policy making and mental health care..

Until the end of the Second World War, the philosophical paradigms of the Enlightenment remained in place, and social norms appeared to be, for the most part, unchanged. The philosophical paradigm, however, had begun to shift during the nineteenth century, under the principal influence of Karl Marx, and Friedrich Nietzsche, and during the 1930s, others such as Jean-Paul Sartre, who would have seen himself as a follower of the existentialists, rather than Nietzsche. All these philosophers may be grouped together as Genealogists.(48) The significance of Nietzsche and similarly minded philosophers to justice and to social justice will be discussed in the following pages chronologically.

▪ *Marx and Justice during the Industrial Revolution .*

Karl Heinrich Marx, (1818-1883) is remembered as a radical social theorist and organizer of the working class. His thought is widely believed to be the chief inspiration of modern social radicalism. (49) It was Marx who first attempted to see justice as fundamental to the matter of the social and economic conditions in which people live, of the kind of labouring activities they perform and the practical relationships in which they stand to one another. This was at the time of the implementation of *laissez faire* government. (50) Marx's concern for the plight of the working class was from the beginning, a concern not merely with the satisfaction of 'material needs' in the usual sense, but fundamentally, with the conditions under which human beings can develop their 'essential human powers' and attain 'free self-activity' (Wood in Honderich, 1995 : 524-525).

-Enlightenment and the rise of laissez faire-capitalism in relation to Marx and social justice.

From the time of the Renaissance in the fourteenth century, there had emerged another concept other than Natural Law, and contrary in its juxtaposition of man and God. Whereas Natural Law considered man as an individual precisely because he was created

by God and subject to His law, the Renaissance man conceived the idea of the autonomous individual, one who is sufficient unto himself.(51) It was conceded by some of the adherents to this philosophy that there might be a god, but they rejected any norm of morality other than the prompting of one's individual conscience. (52) As it has passed into common use, the word 'Liberalism' can refer either to a philosophy which is a view of man's relationship with the world, and with other men, to a political view-an account of the origin and nature of political authority, state and the government, or to the economic theory-an account of the creation and distribution of wealth (Charles SJ. 1982 : 93).

By the end of the Classical Age (toward the end of the eighteenth century), philosophers in England had recognised the significance of not using up all the resources in meeting consumption needs. (53) By the time of the Industrial Revolution, industries had developed which were too large for small management by craftsmen. Market growth was such that organizational talent was required to form economic and industrial groups some of whom ruthlessly pursued their own industrial, power and profit agendas heedless of the economic, social, recreational and welfare needs of their employees. This environment would prove significant to the sequestration of those unable to enter the workforce, such as the mentally ill. The whole concept of sequestration, and especially asylumdom will be pursued in Chapter Three. Britain was the home of Liberal-Capitalism during the Industrial Revolution, (54) and also the scene of its worst excesses (Charles SJ. 1998 : 421-3).

The question that must be asked is why did the Industrial Revolution take place in England, instead of, perhaps France? (55) It is suggested that Capitalism as introduced during the Industrial Revolution in England, failed initially as a progressive movement, because of the worst excesses of those industrialists and others who espoused the changes. (56) The legal regulations were adjusted to the technico-economic requirements (Heilbroner, 1962: 86-87). This could mean that if in 1800 in England, because of low wages, labourers had to work fourteen hours or more per day, and that women and children, some below the age of seven years were engaged in factory work, then only a *limited* correction was allowed as an *afterthought* to alleviate the excessive exploitation of human beings and their families.(57) The plight of the mentally ill in this milieu was so marked, it will be considered in depth in Chapter Three. It was against circumstances such as these that Karl Marx and Pope Leo XIII both railed in the name of social justice, addressing the situation from different points of view.

Pope Leo XIII in his encyclical *Rerum Novarum* (15 May, 1891), later condemned the greed of such capitalists and argued that the evils so manifest were not the result of private ownership itself. They were the result of Liberal *laissez-faire* Capitalist philosophy which assumed it was not necessary for any social control to be exercised over capitalists to ensure they met their social responsibilities (in Charles SJ. 1998 : 421-424). **(58)**

Marx for his part, responding to the excesses of Liberal *laissez-faire* Capitalism, argued that the value of a commodity depended on the relative quantity of labour necessary for its production. The part of the value created which went to the producer, Marx named 'surplus value,' and asserted it to be a theft from the worker (Easton and Guddat: 1967). This theory played a large part in Marx's prediction of capitalist self-destruction. **(59)**

Marx encouraged revolution through class warfare, and in this may be seen to have some similarities to the ideology of revolution espoused by the Enlightenment. He believed that the *laissez-faire*-capitalist system would produce masses eager to rise up and destroy the system (Theophanous, 1994:40). In this, he underestimated the conversion of the bourgeoisie to both Capitalism and Liberalism in Europe and the United States of America. In the Western World after the 1830s, reforms and improvements in standards of living, in educational opportunities and in health care for bourgeoisie and artisan classes, gradually thwarted Marx's revolutionary aspirations.

One influential Italian Marxist of recent years, Antonio Gramsci, (1891-1937) believed theory of education to be integral to political theory and developed the concept of hegemony or ideological power. **(60)** Gramsci was primarily concerned with socio-political change which, he believed should and would come about by education, and for this reason, was concerned to change the hegemony of the school, so that through education, the working classes could seize power (1971:57-8). In this he showed his difference in thinking from Marx, who believed in revolution by force. Marx's theory was exploited in Russia during the 1917 Revolution by Lenin and continued for another fifty years in the USSR in a distorted form under Stalin. **(61)**

Marxists have argued that immediately after World War II, for the whole of Western society, the presence of a strong Eastern Bloc caused attention to be given to welfare, to health and social services, and to education in Western policies. as a means of

counteracting Stalinist Communism (Glendon, 2001:4-20). This argument will be considered in Chapter Five, when the whole question of Human Rights during the post-war years will be analyzed. It is significant that only since the demise of Communism in Russia, has economic rationalism been seen in such an influential role as it now enjoys, bringing with it a social injustice and worldwide misery to so many millions, mentally healthy or ill (Theophanous,1994:155). **(62)**

▪ *Friedrich Nietzsche and justice.*

Nietzsche's aims may have been different, but his methodology was similar to Marx (Schacht in Honderich, 1995:621-623). An avowed atheist, he wrote vehemently that the most important value in life is power. In 1887, Nietzsche published Zur Genealogie der Moral, (hence the name: Genealogists) which provided not only an argument in favour of, but also a paradigm for, the construction of a type of subversive narrative, designed to undermine the central assumptions of the Encyclopaedia, both in contents and genre (MacIntyre, 1990:25). In his writings, Nietzsche did not try to refute Kantian and Utilitarian theories. Instead he exposed what he believed to be the psychological forces which led people to assert such views (Schneewind in Singer, 1993: 154). **(63)**

Nietzsche's essential honesty caused him to consider society objectively. His argument was not so much with the Encyclopaedists' attempts at rationalization, but at what he saw as the hypocrisy of the Enlightenment movement; especially, the theories espoused by Kant. Nietzsche believed that Kant had commenced as a rationalist, and then 'hedged his bets', writing in defence of metaphysical belief as well. **(64)** Nietzsche wrote passionately of individual responsibility, and saw the Enlightenment philosophers as abrogating this personal responsibility.

Alasdair MacIntyre asserts that where the Encyclopaedist aspired to displace the Bible as a canonical book, the followers of Nietzsche intended to discredit the whole notion of a canon (1990:19). Their aim was the overthrow of the conventional, hypocritical morality of that time. Pence has asserted, rather harshly, that those virtues encouraged by Christianity such as pity, compassion, gentleness, kindness, industriousness and friendliness, Nietzsche held in contempt, and at odds with nature itself (Pence in Singer, 1995:180). Without these virtues, however, care and justice for the mentally ill could descend into indifference. Indeed, Nietzsche seemed unaware of how an anti-Christian ideal of character would look.

Again, Pence has written that ‘Superman’ would lack compassion, and might only assist the underprivileged when he felt like doing so, not because of any moral obligation (Pence in Singer, 1995:254). It is suggested that rather, what Nietzsche was attempting to convey was that his ‘Superman’ was superior because he was prepared to take personal responsibility for his own moral actions, including the creation of his own moral rules by which he would attempt to live, and by which he would judge himself.

Such a philosophical view throws enormous responsibility on to the individual, who, without the guidelines of for example, the informed and guided conscience of Natural Law, is left to form his/her own guidelines, morality and evaluation system. The wishful thinking of the Encyclopaedists that experience would ensure that past mistakes were not repeated, may be seen as a disappointment in the implementation of Nietzschean theory. Not all members of society will care about the disadvantaged. Not all will believe in social justice. It is this option to care or not care according to one’s moral standard, desire and convenience, that makes the genealogist view so unsuitable and may lead to injustice in mental health care delivery unless there are built-in safety measures for judging the standard of care. This topic will be elaborated upon in Chapter Five.

In ignoring the traditional value system which encouraged kindness, sympathy and inclusion of the marginalized into society for the common good of all, self-aggrandisement, ambition and ruthlessness in public and private life are not necessarily made acceptable, but are matters for individual judgment only. The value of work as a means of self-esteem for the individual may be ignored, and may even be rejected.

-Post Nietzscheanism –Postmodernism and Justice

Following the Second World War, a time of rapid change was entered upon, in which the genealogist view came to the fore, particularly in the form of postmodernism. Postmodernism is essentially anti-Enlightenment, rejecting authority *per se* and promoting scepticism. (65) Enlightenment figures rejected authority in favour of reason. In making this statement, one is not so much causing a dichotomy between authority and reason. One is accepting responsibility for the mentally ill individuals and their activities in order to preserve their human right of justice. While the connection between postmodernism, deconstructionalism and social justice may appear tenuous, they are included so as to enable understanding of the thought processes behind one of the most prominent of the postmodern

deconstructionalists, a follower of Nietzsche and a member of the Genealogical school of thought - Michel Foucault (1926-1984).

- *Michel Foucault and the concept of mental health care and social justice.*

This French philosopher examined obscure historical materials with the aim of diagnosing the present. He called his early books ‘archaeologies’, and showed a particular interest in writing about marginalized members of society such as the mentally ill, in, for example, Madness and Civilization (rev. ed.1971). This offered an archaeology of how the exchange between madness and reason were silenced by the birth of the asylum (Bernasconi in Honderich, 1995: 288-9). (66)

The differentiation of the group of deviants labelled as ‘mentally ill’, Foucault asserted, had kept them excluded from political power and social equality. This is part of the authoritarianism which Foucault *et al* among the postmodernists associated with twentieth century Western culture. Foucault saw the Classical Age as responsible for Reason repressing Unreason, which he alleged in mediaeval times was allowed free rein (Foucault, 1987:67). His flamboyant prose described the ‘existentially free mediaeval madmen roaming the open countryside,’ a figment, Erik Midelfort alleges, of Foucault’s ‘overactive imagination’(67) (Midelfort, 1980:254). Madness in mediaeval times will be discussed in Chapter Three.

Porter has maintained that Foucault’s furious attack upon the machinations of ‘bourgeois Reason’ reflects a series of moral choices that lie beyond the realm of empirical argument (Porter in Scull, 1993:6). Foucault’s writings struck a sympathetic chord with the post World War II atmosphere. The environment had been prepared for a change of philosophical viewpoint from the Encyclopaedists, by the post war promotion of Nietzsche to the position of a major philosopher, supported especially by the thinking of Sartre, Marx and Foucault (Sacks, 1999: 121). (68) The revolution in philosophical thinking which occurred between 1945 and 1969 brought to fruition the long dormant division observed by the Enlightenment philosopher, David Hume between ‘is’ and ‘ought’ (Sacks, 1997:133). Hume had written:

In every system of morality...I have always remarked, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God...when of a sudden I am surprised to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. (A Treatise of Human Nature Book III, Sect.1, final para. in Sacks, 1997:90)

Hume observed that this system breaks a rule of syllogist reasoning, that there should be nothing in the conclusion that was not already in the premisses. It is included in the thesis, because, perhaps unwittingly, Hume had opened up a gap between ‘facts’ and ‘values’, between description and prescription (Sacks, 1997:90). **(69)**. In 1936, Ayer took Hume’s argument to its logical conclusion, and asserted that if there is no legitimate transition from *is* to *ought*, then moral judgments are merely expressions of emotion (Sacks, 1997:95).

After the Second World War, Jean-Paul Sartre manipulated Kant in a similar fashion. Whereas within the framework of the eighteenth century, free choice might be synonymous with established custom, for Sartre it meant ‘existential’ choice, with responsibility being taken by the individual for his/her own moral life. Kant had believed we could discover morality through reason. Sartre saw the human being as his/her own legislator, making all decisions for oneself and being responsible for oneself (Sacks, 1997:94-95). Sartre believed that many people appeared to use God as a crutch and also an excuse to hide behind, so that they abrogated personal responsibility for their actions, and used religion and official regulations to plead inability to show moral courage to exercise their own judgment and free will (in Fagothey SJ. 1972, 187-201). **(70)**

It was within this environment that Foucault’s treatise: Madness and Civilisation, was translated by Ronald Laing and published in the New Statesman, a London journal with a large academic following (1967:Vol. 73:843). It was received enthusiastically with its attack on institutionalization (Shorter, 1997: 274). It was the signal for a release of a series of hostile criticisms of health care, of imprisonment, and of institutionalization in general. **(71)** The issues related to the anti-psychiatry movement in relation to mental health care will be addressed in Chapter Four (pp. 187-190).

These destructively critical writings coincided with the development of neuroleptic drug therapy, which enabled many psychiatric conditions to be stabilized so that there was a real possibility of patients being cared for within the community. There was at the same time a change in social attitudes to social mores, about which Rodger Charles SJ. has written extensively. **(72)** Charles has stated that the post war generation began to assert itself in a negative way. The welfare benefits and ‘safety net’ of immediate post war governments were taken for granted. Within Australia, the ruling philosophical views were of the logical positivists, rationalists and materialists. **(73)** There was a paradigm shift in social behaviour,

as described in **fn72**, demonstrating the prominence of Genealogist philosophical views of permissiveness and non-judgmental attitudes towards others, which were influencing academia and the schools (Sacks, 1997:117). The key word was ‘permissiveness.’ One was not to be judgmental of any personal preference in action or lifestyle which others wished to adopt. Their wishes or lifestyle should not be hampered by one’s own wishes and lifestyle. This was the only limitation (Charles SJ.1998 :194). **(74)**

It will be shown in succeeding chapters, that the new and radically different ideas of the Genealogists when unleashed upon a still mostly Enlightenment-Utilitarian society, during the 1950s and 1960s, had a significant effect upon the mentally ill and mental health care. The mentally ill in the post war years, would now face a world of relativism, of shifting sands, where change would be continuous. A different theory, such as provided by Natural Law was needed, to give a more sympathetic approach to mental illness. In such a world of diverse philosophical theories, a philosophical view such as Natural Law was required to encompass, adequately, the principles of social justice. These points will be addressed in Part B of the chapter, to determine whether these principles of social justice would be wider and more all-embracing than those resulting from Enlightenment theories.

CHAPTER TWO: B

4. A Theory of Natural Law as described by John Finnis and related to the concepts of justice and social justice for the mentally ill. Construction of a Natural Law Model in accord with Finnis’s theory of Natural Law.

In Finnis’s works, justice occupies a central theme and has its origins in Greek concepts of justice, **(75)** drawing considerably on Aristotle who, Finnis affirms, first treated the concept as an academic topic (1980:161). **(76)** Finnis asserts that Natural Law, which embraces both faith and reason, has been championed authoritatively throughout the ages by the Catholic Church, which has utilized the moral theology developed by Thomas Aquinas during the thirteenth century (Finnis, 1980: vi). Fundamentally, Aquinas’s approach included:

A theory of practical reason by which moral principles are naturally known (natural law) and confirmed by divine revelation; an anthropology that examines the nature of human persons and thus what fulfils them; a moral psychology of virtues both natural and infused that integrate, moderate and direct character; and a theology of grace and beatitude that empowers and motivates agents toward their final good. (Fisher, 1998:475)

Finnis has asserted that for Aquinas, there is nothing extraordinary about man's grasp of Natural Law:

"It is simply one application of man's ordinary power of understanding." (1980: 400)

Aquinas had inherited from philosophers such as Aristotle and the Stoics the idea that human beings naturally attempt to fulfil their nature, and that by applying reason to reality, people can discern their genuine good and appropriate norms of action (Fisher, 1998: 475). Aquinas drew from the classical tradition, a portrayal of those good dispositions of character (virtues), that people have by temperament or education (instruction, imitation and practice). According to Finnis:

A sound theory of natural law is one that explicitly with full awareness of the methodological situation, undertakes a critique of practical viewpoints, in order to distinguish the practically unreasonable from the practically reasonable, and thus to differentiate the really important from that which is unimportant...(Such a theory of natural law) claims to be able to identify conditions and principles of practical right-mindedness, of good and proper order among men and in individual conduct. (1980:18)

This philosophical view has been carried forward, and during the past forty years a new Natural Law theory has been articulated by philosophers such as John Finnis and Germain Grisez, often assisted by the writings of Joseph Boyle Jr. (George, 1988: 1385-1389). Their approach is consistent with the Thomist tradition, but includes some important refinements which incorporate insights from neo-Kantianism, Naturalism and virtue ethics (77) (Slote in Honderich, 1995).

Finnis has stated that the principles of natural justice distinguish sound from unsound thinking, and can enable one to formulate a set of moral standards (1980:23). Such principles justify the exercise of authority in the community, in a manner that accords with the respect for human rights which will be shown to embody the requirements for social justice, and similarly promote the common good. Such a claim means that Natural Law gives justified criteria for the formation of general concepts in the social sciences, and prevents their theories from being mere expressions of ideas (Finnis, 1980:18). This is important for the health professions who number many social science graduates among their members. The other justification Finnis advances for using his particular model of Natural Law is that it will:

"Primarily assist the practical reflections of those concerned to act, whether as judges or as statesmen or as citizens." (1980:18)

The significance of this justification is that it implies that the law, enacted by statesmen in Parliament, should be a just law, reflecting the common good, that is, the good of each citizen, both in the provision of just laws, but also each citizen's respect for his/her fellow citizen, assisting each other to realize his/her potential, and not merely provide an answer to political expediency. In administering the law, it is the responsibility of the judiciary to insure that the justice they dispense is true justice, answering the needs of all members of the community, not merely the majority, while all citizens are expected to respect and obey just laws which are for the mutual benefit of the entire community (Finnis, 1980:18).

It would seem eminently suitable then, to construct and use a Natural Law model for analyzing and planning mental health care, to compare and contrast historical mental health practices in Chapters Three and Four, as well as current mental health care practices in Chapter Five. Such a model may be recommended for use by all citizens as a blueprint for our daily living and is shown on page 60 (Figure 2.1).

Construction of a Natural Law Model using Finnis's Natural Law Theory

Finnis's theory is figuratively represented in this chapter by a model in the form of a piechart, made up of segments identical to each other. They represent the units used in developing the theory, namely: the basic principles of justice, law, authority, obligations, rights, and practical reasonableness, standing on a base representing community/society. The segments are joined to each other by a thin black line, the common good. The complete model is necessary with all its components in order to produce social justice.

-Segments of the Natural Law model.

- *Justice*

Justice is defined by Charles as:

"The virtue which enables us to give to others what is theirs by right, that to which they have a moral right, and one that can be vindicated at law; the function of the law being to secure social justice." (Charles, 1998:396)

Unfortunately, the legal system, because it is administered and implemented by human beings, is sometimes flawed in its workings. This in no way undermines the fact that the overarching function is to secure justice (Charles, 1996:396). For ease of description and management, Natural Law divides justice into general and particular compartments.

-*General(Universal) justice* is essentially the responsibility of the legislator, but has secondary implications for the citizen, who is obliged to obey the laws of the land.(78) In this instance, the state is seen as the caretaker of the common good which will be referred to on pages 62ff, and discussed on page 71. Universal justice relates also to the responsibilities of the legislator to provide just law, and to the individual to obey such law. Acted upon in this way, justice produces *social justice*, that is, justice in society, in which legislation provides for the structure for all to develop their potential, and individuals themselves to contribute according to their abilities, to the common good (Finnis,1980:396).

-*Particular law* is further sub-divided into *commutative and distributive justice*.

-*Commutative justice* covers justice between individuals and the issues of contracts and agreements between them. This justice is arithmetical, and so promises made must be precisely executed (Aquinas, Summa Theologica: Iia, Iiae, Q.61, art.1, art.2 in Finnis,1980:185).

-*Distributive justice* is acknowledged by Enlightenment writers such as Miller (1999:2-3), as being concerned with the State's distribution among its citizens of honours and goods, in accordance with the amount of service given to society by specific citizens. Under Natural Law, this does not exclude the State from insuring that all members, including the vulnerable, such as the mentally ill, are to be given access to the availability of contributing to the common good, according to their capabilities, and to receiving a standard of living comparable with all other members of society. (79)

An added dimension will include the component 'charity' interpreted here as love and compassion for one's neighbour. Charles reminds us as a Thomist, that justice without compassion, without charity as unconditional love, cannot knit society together (Summa Theologica, Iia Iiae, Q.29, art.3, in Charles, 1998:397). Charity in the delivery of justice may be seen as another name for 'social justice.'(80) Rodger Charles, SJ. has maintained that to neglect charity is inhuman on the part of the community, and displays disrespect, contempt and lack of love for those in need of justice (1998:397).

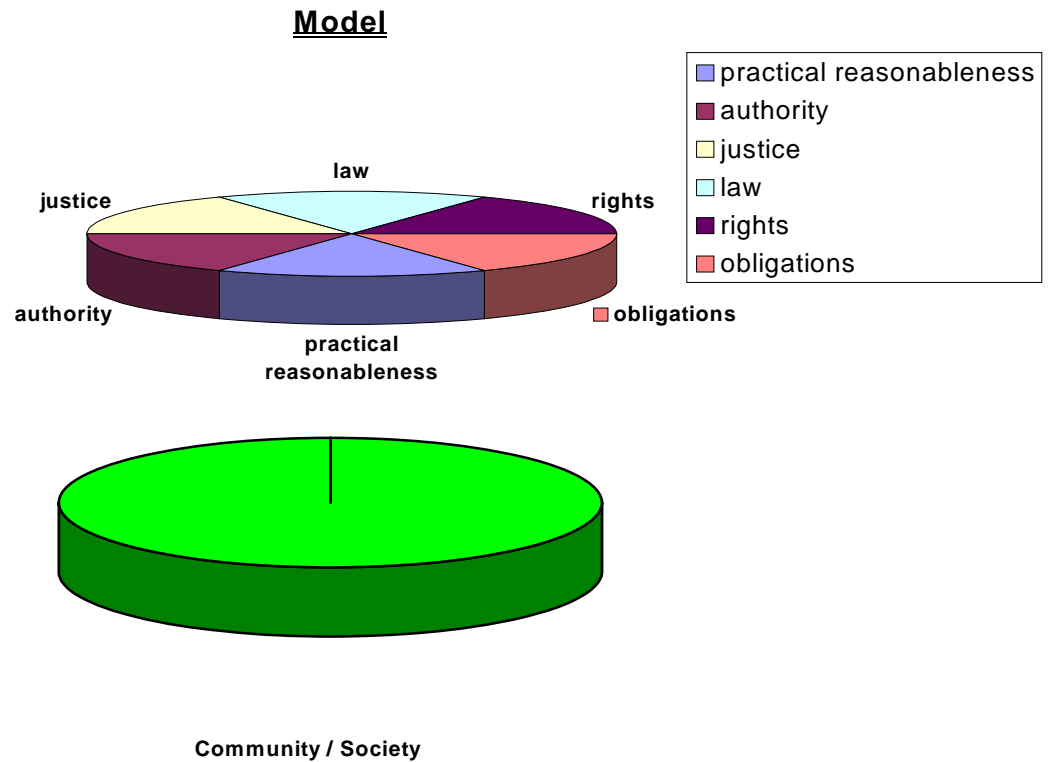


Figure 2.1: Finnis's Natural Law Model, showing the segments which make up Natural Law, each identical to the other in size, standing on a base of society/community, joined to each other by the common good

One means of demonstrating our commitment to all the community is by means of the Principle of Subsidiarity, which is an awareness of our common humanity which should lead to the strong caring for the weak, the well caring for the ill, the rich sharing with the poor, regardless of race, colour or creed (Charles, SJ. 1998 :396). The Principle of Subsidiarity is an essential principle of justice, which treads a fine line on the one hand between giving what is needed to an individual in order to enable that person to promote his/her own needs, and on the other hand, in refusing that need. **(81)** The Principle of Subsidiarity can be endangered by the well meaning but impersonal ‘Welfare State Syndrome’. The latter’s intent is good: no-one should suffer need because of adverse circumstances, but to determine people’s needs only by Statutory definition and bureaucratic regulation is to demean the individual. The act of benefit becomes an act of welfare, not a charitable (that is, ‘good’) act, afforded a human being as an unconditional act of love because s/he is a member of the community and deserves to share in the common good. The principle is one of justice translated as social justice (Finnis, 1980:146). **(82)**

Gaita has written, that the terribleness of injustice not only consists of the natural harm related to it, but also the torment afforded the victim of the infliction of the injustice itself (1999:82). Simone Weil described justice as:

The... difference between the man who witnesses an act of justice and the man who receives a material advantage from it is that in such circumstances the beauty of justice is only a spectacle for the first, while for the second it is the object of a contact and even a kind of nourishment. (Essay “Forms of the Implicit Love of God.” in Waiting on God, in Gaita, 1999:83)

The English political philosopher, John Gray, has alerted society to the harm done to those suffering injustice who see justice only in terms of fairness and equality. He has stated that:

“The bottom line in political morality is never justice or rights, but instead the individual well-being which they protect and the common form of life in which it is realized.” (Beyond the New Right Routledge, London, 1994, in Gaita, 1999:83)

Raz, an Oxford contemporary of Gray has written:

What makes us care about the serious inequalities is not the inequality, but the concern identified by the underlying principle. It is the hunger of the hungry, the need of the needy, the suffering of the ill... The fact that they are worse off in the relevant respect than their neighbours is relevant. But it is relevant not as an independent evil of inequality. Its relevance is in showing that their hunger is greater, their need more pressing, their suffering more hurtful, and therefore our concern for the hungry, the needy, the suffering and not our concern for equality makes us give them priority. (“Practical Reason and Norms” 1975, in Gaita, 1999:82)

Later in this chapter, it will be shown that both these writers demonstrate a justification for refuting Miller's distributivist conception of justice (1999:2-3), which has blinded him and his fellow Enlightenment Liberal conservatists into believing that significant structural inequality in a society does not entail that anyone is wronged by it (Gaita, 1999:83). Both community and the individual are harmed, not only by the needy suffering from physical and emotional deprivation. On account of the indifference of the community to his/her need, the victim suffers from the rejection of community members, and on their part, the community suffer from the guilt of not responding to the complete humanity of the needy member. This concern for justice in the community is social justice, and is connected with compassion (Gaita, 1999:84). Again, Simone Weil has expressed the invisibility of the marginalized such as the mentally ill, when she writes:

"If anyone wants to make himself invisible, there is no surer way than to become poor, (but) love sees what is invisible." (Essay: "Forms of the implicit love of God", in Gaita, 1999:84)

It is surely this welding together of compassion as the unconditional love of our neighbour, combined with justice for all members of society, that gives us the common good, in which all members of the community may flourish under the just authority of the rule of law.

- *Law*

The concept of justice, in all its elements and components, is made manifest through the Rule of Law, using its authority to set rules, and the corresponding obligation of the community to obey them for the common good of all. The combination of law enforcement by the authorities, and their acceptance by members of a group, provides a complete community, purporting to have authority to provide comprehensive and supreme direction for human behaviour in that community, and to legitimize all other legal arrangements affecting its members (Finnis, 1980:148-9).

The authority of the law depends upon its ability to secure justice and to protect citizens against their enemies (Finnis, 1980:23). It also provides for justice in caring for their properties when they are incapacitated, and in administering the law with compassion for the client's vulnerability. Particularly in relation to the focus of this thesis: the mentally ill, it will be shown to play a part in shaping their treatment in making the serious decision to deprive them of individual liberty in the interest of both the common good and the mentally ill person's own interest. **(83)**

▪ *Authority*

Authority relates to the fact of human freedom in moral choosing, and enables group members to achieve their common purpose, namely, the common good (Finnis, 1980:231). Without authority, projects and other ventures might never proceed; a particular choice needs to be made and decisions taken in resolving problems and finding appropriate resolutions. Actions, therefore, need to be co-ordinated. To do this, two paths are open to make a choice in the common good (purpose) of the group. There has to be unanimity or authority (Finnis, 1980:232). **(84)**

For the mentally ill, it is important that authority should include them as citizens to whom the common good applies. Where they are too ill to understand the implications of the authority, then it is the responsibility of those caring for them to assist them to conform to the rules and customs of social usage, and not leave them adrift to make uninformed ‘choices’ about situations they clearly do not understand. Authority is closely tied to law, which has:

“Authority to provide comprehensive and supreme direction for human behaviour in that community.” (Finnis, 1980:260)

The authority of the law depends on its ability to secure justice, and where there is a reluctance to accept recognized authority for the common good of the community, it is authorized to employ sanctions. The legal sanction itself is seen by Finnis as a human response to human needs, and is required in order that every member of society may be taught what is the common path, namely, the law, that they must follow in order to pursue the common good (Finnis, 1980:261-264). Those who would stray from the common good path need to be given incentive to conform to authority, and law abiding citizens need to be demonstrably encouraged that they will be supported by an authorized body. The wrong doers are not to be seen as profiting from their misdeeds. The concept of fairness is uppermost in this situation.

Punishment seeks to restore the order of fairness...(by rectifying) the disturbed pattern of distribution of advantages and disadvantages throughout a community by depriving the convicted criminal of his freedom of choice, proportionately to the degree to which he had exercised his freedom, his personality, in the unlawful act. (Finnis, 1980:263)

One can see here how significant and important it is not to ascribe to the mentally ill individual the misconceived idea of ‘choice’, during an illness where an informed choice may prove impossible to be made, and the ill individual may, unwittingly, break the law.

This situation, which has become serious since de-institutionalization, will be related to the findings of the *Burdekin Report* in Chapter Five. Those who do not comprehend how to conform to the social mores, have no money for necessities of life, and are easy prey to unscrupulous wrongdoers, may fall victim to the penal system, and their liberty may be removed unjustly. They have no place in such a penal system as will be shown, and it cannot be said that they have merely been exercising their rights, nor have they unknowingly broken the law. Informed choice was discussed in detail earlier in this chapter, (pp. 30-31, and **fn.5**) and will be referred to frequently throughout the thesis. The law is closely involved with mental illness, specifically, because, in the interests of safety of society and of the ill individual, it may be necessary to confine that person during an acute episode of psychiatric illness. The circumstances, therefore, need to be as precise as is possible, and the rights of both society and the individual safeguarded by building in measures that will prevent abuse of the system. This will be considered in discussing the *Australian Health Ministers Advisory Council (AHMAC)*, and *Burdekin Reports* in Chapter Five.

▪ *Obligations*

Finnis is at pains to emphasize that the good of an individual party to a promise which:

“by virtue of that promise gains some priority of claim upon the care and concern of the promisor...is not distinct from the common good. It is the common good.” (1980:305)

The building segment of obligations is derived from practical reasonableness itself (Finnis, 1980:305). Its relationship to rights is important. The rights of each citizen are balanced with the rights of the individual, and the obligations we owe to each other are paramount. In planning a program of rehabilitation for the mentally ill individual now living in a community setting, there is a responsibility for the health professional to do this as an obligation to the client, and to other citizens who are paying taxes to assist in housing and other support of the client. The latter has a right –in other words it is just, that such facilities should be available, and equally, as far as his/her health permits, the client is obligated to assist in the implementation of the plan by, for example, taking such medication as will assist socialization, and by becoming involved in whatever suitable program is suggested and mutually agreed upon. By so doing, the general community, the health professional and the client are each contributing to the overall common good. The concept of obligations will be referred to again in the thesis and discussed in relation to the

Universal Declaration of Human Rights which is introduced below, and will be elaborated upon in Chapter Five.

- *Natural Rights*

Finnis uses the term ‘human rights’ synonymously with ‘natural rights’, and believes that Natural Law is in fact about human rights (1980:198). Natural or human rights is a means of describing what is just, for one to whom something is owed or due, and who would be wronged if denied that something. (85) There is then a duty on the one to act in the common good to the other by being just, and contributing to social justice. An example of the modern use of ‘rights talk’ is given as *The Universal Declaration of Human Rights*, proclaimed by the General Assembly of the United Nations in December 1948. (86)

When the Universal Declaration of Human Rights was adopted by the United Nations, it was intended to describe a common standard of attainment for all nations, but did not impose legal obligations on governments. (87) In 1945, the Declaration was written in general terms; there were no details as to how those rights should be translated into practice. In the last fifty years, individual documents have been written to address specific types of discrimination which will be discussed in relation to the natural rights and social justice of those with a mental illness in Chapter Five.

The Declaration flows very much out of the Utilitarian tradition of the Enlightenment, although Bentham, an exponent of Classical Utilitarianism, did not himself believe in rights. Both Utilitarianism and the Classical Utilitarianism of Bentham were discussed earlier in the chapter (Pp 38-41).

- *Practical reasonableness.*

Considerable allusion has been made to practical reasonableness throughout this chapter; it is explained by Finnis as :

“A reasonableness in deciding, in adopting commitments, in choosing and executing projects, and in general in acting.” (1980:12)

Finnis uses practical reasonableness not only as a concept, but also to describe a value system which he believes is demonstrated in:

“Various moral requirements and restrictions, (and) also in the many forms of human culture, institutions and initiative.” (1980:84)

For the sake of clarity, practical reasonableness will be discussed at the end of the next section of the thesis on the value system of which it also forms a part.

- *The value system of Natural Law.*

Finnis has stated that the the basic values as described below are universally manifest, not only in moral requirements, but also shape the various forms of human culture, institution, and initiative (1980:84). Further, Finnis asserts that

“This plasticity of human inclinations, which correlates with the generality of the corresponding values understood by one’s practical intelligence, is important for an accurate grasp not only of human anthropology and history, but also of the human virtues and vices, conscience and ethics.” (1980:84)

Finnis has defined seven basic values **(88)**

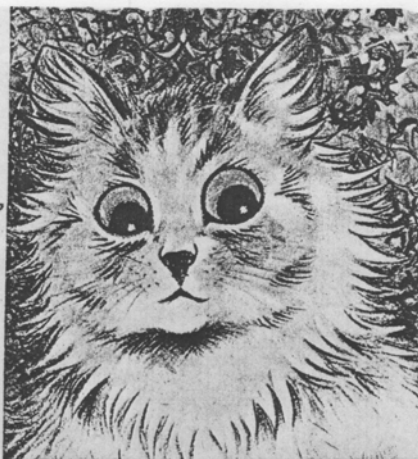
- life,
- knowledge,
- play,
- aesthetic experience,
- sociability/friendship,
- practical reasonableness and
- religion.

All these values will be shown to relate to mental health care, but the value of friendship is emphasized, because of its essential need by the mentally ill. For example, to remove the mentally ill from a psychiatric hospital, place them in a unit on a housing estate, but leave them isolated without the assistance to communicate and form relations, such as friendship with other members of the community, or to develop social and educational skills, is not de-institutionalizing those people: it is merely changing the venue. The feeling of being out of contact with reality during a major psychotic episode, and the inability to describe the sensations as they are occurring, are reported by those who experience them as truly terrifying (Burdekin, 1993:470). The illustrations of Figure 2.2 (page 66 A), depicting the deterioration of the artist’s awareness of his surroundings and the disintegration of his hold on reality during a schizophrenic episode, demonstrate the isolation and terror of the situation. The practical and sympathetic support of the community at times such as these, is all important to the mentally ill. The good of friendship is a good in which the mentally ill can share.

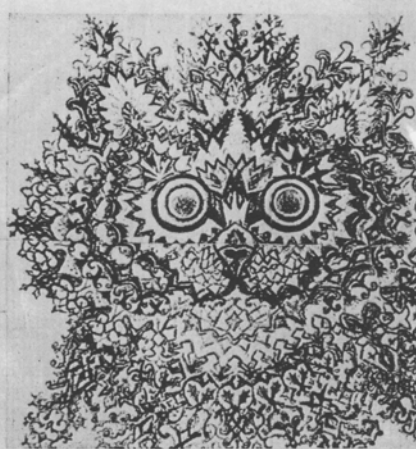
-*Religion:* Finnis does not employ metaphysical aids in his Natural Law arguments. **(89)**

Finnis’s theory would seem to be an appropriate view to employ in a thesis related to mental health care in Australia which is a multi-cultural society. Nevertheless, he refers occasionally to the Roman Catholic Church’s pronouncement on Natural Law:

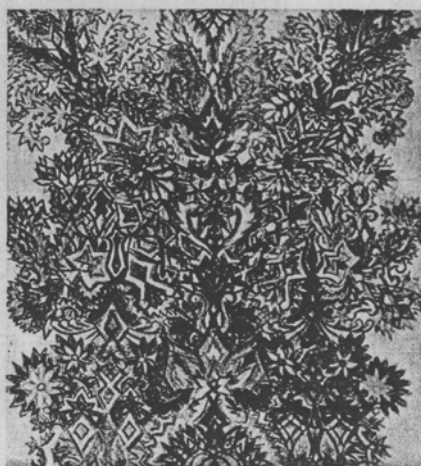
“Because that body is perhaps unique in the modern world in claiming to be an authoritative exponent of natural law.” (Finnis 1980:vi)



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BY LOUIS WAIN



These cat paintings show the changes in the style during schizophrenic attacks of the well-known British artist of the early 1900s, who lived surrounded by the cats he used as models for his drawings. During the early 20s he had a mental breakdown which was diagnosed as schizophrenia, from which he suffered intermittently until his death in 1936.

These pictures are reproduced by courtesy of World Health Organisation and the Guttman-Maday Collection

In the modern world, the Catholic Church also has been one of the foremost among other authoritative bodies, to have championed the cause of social justice. (90) Examples of the practical application of the Catholic Church's teaching on Natural Law and social justice, especially in relation to current mental health care, will be discussed in Chapter Five.

Finnis emphasizes that because of their relationship to virtues inherent in the human being, and fostered through training and example, the basic goods may be present without reference to the metaphysical. Belief in the common good and a value system as described above and in **fn.88**, may well be adhered to by Genealogists or Encyclopaedists, as well as by members of many religions and various denominations of the Christian religion, as well as those with no religion. The Catholic Bishops of England and Wales have stated that:

"In defending and upholding human rights which are an expression of natural law, people of all denominations have discovered how much they have in common." (*The Common Good*, 1996: para. 44) (91)

Using Finnis's interpretation of 'good' within this context, the Bishops are referring to ... a "general form of good that can be participated in or realized in indefinitely many ways on indefinitely many occasions." (1980:61

For this reason, the basic value of religion is not included as an essential component in the model, but may be added should the user prefer to do so. The model will work with or without its inclusion. Regardless of the above statement concerning the accessibility of Natural Law for all or no religions, this basic value is maintained in the commentary, because it gives a satisfactory completion to the requirement of practical reasonableness, in pursuit of the basic form of human good. It also gives a metaphysical dimension to Catholic Social Teaching on Social Justice and Human Rights (*Human Rights and the Catholic Church*, London:1998), which will be discussed in Chapter Five. This Social Teaching reinforces the Natural Law model described in this chapter as a suitable model for mental health care, as Finnis has stated :

"God is the basis of obligation." (1980:407)

All these values are of equal importance and are not hierarchically listed. Their use is demonstrated when they are employed in relation to the building segments of the Natural Law model described above. According to circumstances, however, some may be emphasized at a particular moment to highlight a particular need. In relation to individual health needs, for example, assisting one to reach his/her potential is important, not only for the self-esteem of the recipient, but to remind each of us of our responsibilities each for the

other in the common good of all. In this regard, the basic goods of practical reasonableness are all essential for the well being of every human being. (92)

Finnis claims that the basic values of existence are self-evident, which, when participated in, enable one through intellectual decision and free actions to become the person one is (Finnis, 1980:100-103). The way in which the individual uses the value system, is a problem which each person has to resolve for him/herself. These values form part of the justification for using this theory of Natural Law in the thesis. The values may be used or denied by society in our treatment of the mentally ill, and their denial can impinge on the ability of the mentally ill to reach their potential in life.

▪ *Practical Reasonableness*

To re-join the discussion on practical reasonableness; the concepts of justice already described, draw on Aristotle's cardinal principle of method in relation to the study of human affairs: that concepts are to be selected and employed substantially as they are used by the mature person of practical reasonableness (Finnis, 1980:15). In this thesis which is concerned with the treatment of a vulnerable, disempowered section of the community, it is of enormous importance to consider the framework: the requirements of practical reasonableness within which the community functions and is expected to function. Finnis is adamant that each of these requirements listed below is fundamental and concerns what one must do, or think, in order to participate in the basic value of practical reasonableness. Finnis sees them as using the Natural Law method in order to express the 'moral' Natural Law from the first principles of (pre-moral) of Natural Law (1980:103). The following nine requirements of practical reasonableness, then, give reasons why we ought or ought not to make moral undertakings. These requirements include:

- a coherent plan of life;
- no arbitrary preference among values or among persons;
- detachment and
- commitment;
- respect for every basic value in every act;
- following one's conscience;
- requirements of the common good;
- morality;
- the product of these requirements. (Finnis, 1980:105-127)

Practical reasonableness, according to Finnis, guides us in our use of the other basic goods (1980:100-101). Some of these requirements are highlighted below.

-a coherent plan of life: is also described by Rawls as

“A rational plan of life. (1971:408-23) ...That is, having effective commitments, not indulging in sporadic impulses or just drifting, but in seeing our life as a whole.” (Rawls, 1971:420)

-No arbitrary preferences between values: each value is as significant as the next. One may need to be emphasized at a particular moment to assist the coherent plan of life, but this does not de-value any of the other values.

-No arbitrary preferences among people: one must attempt to be impartial in dealing with other human persons in using practical reasonableness. In this, we are going further than promoting ‘fairness’ as described by Rawls. We are attempting to do ‘good’ in the sense of the Judaeo-Christian ethic to our neighbour (Finnis, 1980:107-109).

-Detachment and commitment: these requirements of practical reasonableness attempt to balance each other. They balance between fanaticism and apathy (Finnis 1980:109-110).

-The (limited) relevance of consequences: efficiency within reason: the limits of ‘reasonable foresight’ and the nature of the choices, such as ‘reasonable care’, are fixed almost entirely by tacit appeal to social commitments and moral evaluations made, not by following the Consequentialist’s method, but by following the requirements of practical reasonableness (Finnis, 1980:118). Finnis has stated that one cannot commensurate moral values (1980:115). The Consequentialist (Utilitarian) will claim that either one should choose the act that will yield the greatest net good on the whole and in the long run (Act-Utilitarianism), or else should choose according to a principle, the adoption of which will yield the greatest net good on the whole and in the long run (Rule-Utilitarianism) (Finnis, 1980:112). This reasoning states Finnis, is senseless as is the methodology behind it:

“It is senseless in the way that it is senseless to try to sum together the size of this page, the number six, and the mass of this book.” (1980:113)

Further Finnis alleges that no determinate meaning can be found for the term ‘good’ that would allow:

“... any commensurating and calculus of good to be made in order to settle the basic questions of practical reasonableness which we call ‘moral questions.’” (1980:115)

-Respect for every basic value in every act: this principle of practical reasonableness insists that a form of good is to be pursued by each and every choice of an act which itself is a complete act, regardless of whether it is also a step in a plan or project. (Finnis, 1980:121)

The way in which we use these requirements is very much influenced by our ability to make moral judgments, in using our conscience.

-*Conscience* has often been referred to as being a special faculty or inner sense, but for Aquinas as for the contemporary Oxford moral philosopher, R.M. Hare, it is neither of these things. Hare has written:

“We must not think that if we can decide between one course and another without further thought (it seems self-evident to us, which we should do), this necessarily implies that we have some mysterious intuitive faculty which tells us what to do.” (1952: 64)

Conscience is a judgment of practical reason at work on matters of right and wrong. It is the requirement that one should do what one believes, judges or thinks should be done, and conversely, does not do what one judges or thinks should not be done. Surely a catalyst to activate social justice. (93)

Historically, the Greek and Roman usage of ‘conscience’ suggested judicial function only: after an action is performed, conscience passes judgement on it. (D’Arcy, 1961:3-19,49-71). This usage altered with the advent of Christianity. Saint Paul used the word ‘conscience’ in a completely new sense, while still maintaining the old ‘judicial conscience’. In the first Epistle to the Corinthians, Paul uses the phrase: “Their conscience is uneasy, doubtful.” when describing the problem of the individual’s scruples concerning the right course of action (Cor.1.8:7,10,12).

The context shows that this defective condition is the result of both timidity and action. Being a conscience, it imposes a rule of conduct, but nevertheless may be in error. There are then, two new features in the use of the word ‘conscience’; that of having authority to legislate, as well as that of being subject to error (D’Arcy, 1961:3-19,49-71).

In shaping the Thomist theory of conscience, the Fathers of the Church, such as Saint Jerome, bridged the gap between Paul and Thomas Aquinas by introducing the term ‘synderesis’. This term describes that function of conscience which serves as a guide for conduct; conduct which acts as a directive of one’s actions (Oxford University Dictionary, 3rd Edition, Vol.II 2225). An example of conscience in action is given by D’Arcy:

“Perjury is wrong This would do nicely as the major of a syllogism. The minor would often be readily provided by contemplating the proposed action. For example ‘To swear the oath would be perjury’. The

judgment of conscience would then be clear: ‘To swear the oath would be wrong’” (D’Arcy, 1961: 3-19.49-71)

-The common good.

From what has been written already, it is evident that the common good is interwoven in the substance of Natural Law. Finnis has warned that at first glance, it is possible to mistake the common good for the Utilitarian ‘greatest good for the greatest number.’ Indeed the term ‘common good’ is one frequently quoted by politicians who are inferring ‘the common good for most of the people’, a term which was discussed in **fn 93**, and which Finnis believes to be senseless (1980:118-121). Throughout this thesis, ‘the common good’ refers to a set of conditions which enable all members of a community, including the disadvantaged and the marginalized, to attain for themselves reasonable objectives, or to realise reasonably for themselves the value(s), for the sake of which they have collaborated with each other (Finnis, 1980: 154-156). Thus Finnis sees the common good of this complete, political community to be entirely interwoven with justice, social justice principles which will be discussed later in this chapter, and human rights (Chapter Five).

Lastly, within the common good, there is the unity of common action helping others to fulfil themselves. Community or society is, therefore, a matter of relationship and interaction. The unifying relationships that make community, include: physical and biological relationships, thinking and learning together, applying knowledge, such as the cultural unity which results from a shared language, family relationships or common technique, and caring for them and assisting in their development (Finnis, 1980:135). This unification of the community is an important factor in mental health care, and results not only in the good of all society, but also in individual good by developing within the individual the ability and the desire to help one’s fellow human beings (Finnis, 1980:135). This combination of general and individual good produces a cohesiveness of purpose: ‘the common good’, and affects everyone.

-Morality and the product of these requirements.

In these reflections on basic principles and basic requirements of practical reasonableness, Finnis believes that they generate a moral language:

“...utilizing and appealing to moral distinctions employed more or less spontaneously.” (1980:126-127)

The way in which we make these distinctions is not easy, but requires that we constantly attempt as a result of reflection, experience and attention, to resist the temptation to be biased, distorted or unthinking and simply be reasonable (Finnis, 1980:127).

- *The community/society: a foundation for theory construction.*

Finnis has stated that all basic values need to be included in the coherent plan of life. Knowledge of how mental illness affects the individual's well being, how the community should relate to the patient, what significant part we may play in their participation in the community, is an obligation each one of us is required to fulfil. (94)

The other requirements of practical reasonableness, such as detachment, commitment and efficiency referred to above, are all required to promote a coherent plan of life, and each is as important as the other. They require participation of individuals with each other in society, regardless of ethnic, racial or societal compatability, in order that each may assist the other to reach his/her potential and participate in the common good. The construction block of community, shown in the model, would therefore, appear to be eminently suited to forming a strong foundation on which the building of the theory can take place and where the common good may be employed.

The virtue which enables us to give to others what is theirs by right, that to which they have a moral right and one that can be vindicated at law: the function of the law being to secure justice... General justice produces justice in society, social justice, as the State which has the care of the common good, through humane legislation which enables the citizens...to develop their potential. (Charles, SJ. 1998:396)

-The elements of justice.

Finnis has afforded three elements to the complex concept of justice, applicable to all situations where these three elements are found together. They are: other-directedness, duty, and equality. (95) In defining these three elements of justice, Finnis argues that so assembled and utilized as an assessment of justice, they are sufficiently broad as to merit their classical prominence in that analysis (Finnis 1980:163). In this sense, Finnis's theory is wider than Rawls's who has restricted his theory to the basic institutions of society, that is, liberty, opportunity, wealth and self-respect (Rawls, 1972: 442-446; 543-547; 111-114; 577).

In summary of Natural Law and Natural Rights, use of the proposed Natural Law model, made up of segments identical to each other, and representing the units used in developing the theory, namely, the basic principles of practical reasonableness, justice, law, authority,

obligations and rights, standing on a base representing community/society, and joined to each other by the common good will, it is believed, produce social justice. It is essential that the complete model is used together with all its components in order to achieve this result. Finnis's theory will be employed at appropriate periods throughout the thesis in order to compare and contrast other theories of justice which have arisen out of the Age of Enlightenment, and which relate to treatment of the mentally ill. It will also be used to compare the interpretation of social justice principles by Enlightenment theorists such as Miller, with Natural Law as interpreted by Finnis.

5.Principles of social justice as interpreted by Enlightenment theorists (the Encyclopaedists) and their significance for the mentally ill.

In discussions on mental health care in Australia, social justice principles tend to fall into two categories: those promoted by Liberal social philosophers holding Enlightenment philosophical views, such as John Stuart Mill, and Henry Sidgwick, whose views were discussed earlier in this chapter (**fn. 19**), and those holding to Natural Law theories. Both Mill and Sidgwick referred to social justice in their deliberations on liberty and individual conscience as development of the nation state proceeded (Buchanan, 1979:103). (**96**)

By the beginning of the twentieth century, theories of social justice influenced by Enlightenment philosophical views were being formulated, (**97**) but Miller states that three assumptions are to be made before a theory of social justice can be developed:

1. A bonded society with a determinate membership:

"Forming a universe of distribution whose present fairness or unfairness different theories of justice try to demonstrate." (Miller, 1999:4)

2. The principles advanced may be applied to an identifiable set of institutions whose influence on the opportunities in life for individuals may be recognized (Miller, 1999:5). The influence of Rawls may be seen here. Rawls had made the assumption explicit by stating that social justice is the basic structure of justice, understood as the major social institutions :

That distribute fundamental rights and duties and determine the division of advantages from social co-operation...By major institutions I understand the political constitution and the principal economic and social arrangements...(that) taken together as one scheme define man's rights and duties and influence their life prospects, what they can expect to be and how well they can hope to do. (Rawls, 1972:7)

Miller believes that here, Rawls is assuming that the basic structure of society is sufficiently well understood to regulate it by principles of justice (Miller, 1999:6).

3. There is some agency (the main one being the State), capable of changing the institutional structure and implementing needed reforms. In other words, the State is able to instigate legislative and policy changes required by the theories of justice (Miller, 1999:6).
(98)

When principles of justice are applied to a theory of social justice, Millar sees them as primarily principles of need, desert and equality:

“Principles of need presuppose shared understandings of what someone must have in order to lead a minimally adequate human life (but justice may require that) people should receive benefits in proportion to their deserts...and sometimes they should receive equal benefits.” (1999:19)

In constructing a theory of social justice, Miller proposes utilizing a pluralism about justice applied to Walzer’s Spheres of Justice (1983), which was discussed earlier in this chapter (pp.47-49, **fn 43-45**). According to Miller’s interpretation, he sees Walzer as encountering problems in dealing with the situation where people genuinely disagree about how justice requires social good to be allocated (Miller, 1999:25). Miller, consequently, addresses the problem of pluralism by applying Walzer’s examples to modes of human relationship (Walzer, 1983). In this situation, Miller perceives human beings as standing in different kinds of relationships with each other, allowing others to understand:

“Which demands of justice someone can make of us by looking at the particular nature of our relationship”. (Miller, 1999:25)

These relationships can be complex, but Miller believes it is possible to analyze them in terms of a small number of basic modes. He has stated that in order to discover what social justice means to members of modern liberal societies, it is necessary to examine three such modes: solidaristic community, instrumental association, and citizenship. (99)

According to Enlightenment principles, it is also an essential concept of citizenship, that citizens actively participate in the political affairs of society (Miller, 1999:30). The primary distributive principle of citizenship association, according to Miller, is equality. All citizens are seen by him as being of equal status. They enjoy the same privileges, liberties, rights, and all services provided by the political community for its members (Miller, 1999:30).

This immediately brings into contention social justice afforded the mentally ill. If members of this section of society are too ill to enter into full understanding of their political commitments and to undertake responsibilities to society, they cannot enjoy full citizenship. Their 'equality' is merely a tacit acceptance of their physical presence in the community by the rest of society, without any attempt by the majority to incorporate this group into the activities and mainstream of the community. Miller's theory would not seem to answer the needs of the common good in this circumstance.

Citizenship as a legal status is reasonably well understood in contemporary societies. Citizenship as a substantive mode of association, however, is not easily grasped or accepted. Miller states that an example of this problem is the difficulty people perceive in reaching agreement on the obligations of citizenship, although, if citizenship is an ethical as well as a legal relationship, it must also, presumably, entail responsibilities (1999:40). There are two different aspects to be considered in deciding what justice requires in this domain. The needs of people can be met whose fulfilment allows people to participate fully as citizens, or the relief of need may be a collective act of charity, where we discharge our responsibilities to the poor, without viewing them as fellow citizens. If we hold the latter perspective, then we will see nothing wrong in the welfare being governed by the desert criterion appropriate to instrumental relations, provided we have a safety net in place for the undeserved poor (Miller, 1999:41). It is contended, however, that if the latter view of just desert is held to, gradually, those receiving basic subsistence from the community, will become separated in thinking from the mainstream society, and will become isolated and unconnected with the distributive goods offered to the majority. **(100)**

Miller has stated his belief, that using Enlightenment theories of justice, such as those he has formulated, and the three criteria described above held in balance with one another, will provide a system of fairness, able to address any disputed practical questions of social justice (1999:91-92). There is no guarantee, however, that this system will answer the needs of the mentally ill. It will not automatically uphold a value system which provides for fairness, justice and the common good when dealing with *all* members of the community. Nor is there an assurance that citizens will be dispassionate in answering the needs of the disadvantaged; they may well be judgmental in deciding from their own perspectives, whether the mentally ill are deserving of distributive justice as a need. The needs may be met as charity in the form of welfare, grudgingly given to those who may be viewed as the

undeserving poor. In fact, there may be a total disregard of a recognized obligation on the part of every citizen to assist their fellow citizens to reach their potential, and contribute in whatever way possible to the common good of society, regardless of their social, economic, political or intellectual status. It may be recalled here, that both Gray and Raz were quoted earlier in this chapter, (page 61) as rejecting Miller's concept of social justice, in that our concern should not be so much with concepts of 'fairness' and 'equality', but compassion with our neighbour's greater needs, whatever they may be. In this way, we will achieve the common good for all, not just the majority.

Miller's theory is cogently argued, and demonstrates clearly, the debt modern Enlightenment theorists owe to Locke and others of the nineteenth century who first related rationalism to the mechanism of the clock (Buchanan, 1979:103). The desire to analyze all the working components of social justice theory is there for all to see, and ultimately, that cornerstone of Liberalism: individualism, comes to the fore. People who belong to a 'solidaristic community' have little difficulty in assisting each other. They belong to the same group, possibly the same social and religious sectors, and find it easy to relate to one another, because collectively, they share each other's individual beliefs and opinions. Their social justice may therefore be conditional, and their attitude judgmental in relating to those of a disparate group. The overall impression of Enlightenment social justice is that it reflects a cold, legalistic attitude of scrupulous fairness for the majority of society, but is devoid of an inbuilt obligation to one's neighbour regardless of their similarity to, or dissimilarity from ourselves, and lacks unconditional compassion which is to be found in the common good.

It is asserted, however, that using Natural Law concepts and with a firm belief in the common good, the mentally ill will not be deemed to be a disparate group. The Enlightenment Utilitarian system 'tidied up' the mentally ill into the asylum, so that gradually, the latter because of their absence from society, became a disparate group. Natural Law affirms that the mentally ill have an equal call on distributive justice as a need and an assistance from their fellow citizens to reach their potential, regardless of their social, economic, political or intellectual status within the community.

In Chapter Four, current tendencies towards globalization and multiculturalism will be discussed in relation to mental health issues of employment and the society in which the

mentally ill may find themselves. Miller brings his principles of social justice to face current problems, and comes to a disturbing conclusion with regard to social justice in the climate of economic rationalism, multiculturalism and globalization. Returning to his earlier concept of social justice, which Miller sees as presupposing a 'relatively homogeneous political society' (1999:246), Miller believes that the nation state previously had the capacity to shape the final distribution of its social resources through its major social institutions, in the way that the principles encased in the concept prescribed (1999:246). This presupposition, Miller no longer believes to be feasible:

Political communities are increasingly divided along cultural lines, and states are increasingly powerless to alter the resource distributions that the global market creates. Thus we seem to be moving rapidly beyond the circumstances of social justice... The view I am confronting is that the pursuit of social justice is simply impossible so we might as well drop the idea from our political vocabulary and stop constructing elaborate theories with no practical relevance. (1999:246)

Having made this bitter statement, Miller addresses the twin problems of globalization and multiculturalism, which he approaches from a Utilitarian point of view, attempting a 'net profit' in a situation where there is seen to be erosion of the nation state's boundaries when faced with the range of economic, political and cultural processes at work today. When these changes are taking place, they alter the former characteristics of individualism in members of the community. Members of society may fear the loss of their group characteristics, and, in an effort to preserve their own individuality to which they can relate, become entrenched in their own ways, and reject other points of view (Miller, 1999: 252-253).

Miller also sees multiculturalism as displacing traditional concerns with material distribution as a political concern, in favour of issues with cultural recognition (1999:253). These are not issues of distributive justice, such as political philosophers from Mill to Rawls would have understood them. In this sense, Miller sees the traditional view of social justice declining in importance, when the main consideration is cultural recognition (1999:253). It is in this environment that Miller sees the prospect for social justice as dim:

Multiculturalism has caused people to care less, and disagree more, about social justice as traditionally understood, while globalization has given states tightly constrained policy options, so that steps in the direction of social justice would be blocked, even if there existed the political will to take them. (1999 :253)

There is no doubting Miller's concern about the problem of promoting social justice at the present time. In an echo which reverberates down the Enlightenment years, he comments that social harmony and social stability require that the needs of economically marginalized

individuals must be met by the State. Otherwise one is confronted by the disturbing picture of beggars on the streets:

Investors will be disturbed by the prospect of a revolt of the underclass if ...measures are not taken...A robust defence of social justice must begin by asserting that the meeting of every citizen's needs is a principled requirement of justice quite apart from its economic consequences, and then suggest ways of minimizing the numbers who fall into the economically marginal group. (1999:253)

This attitude raises many questions. It is possible to juggle concepts and principles to fit what may be seen as an acceptable situation for the majority, but what of the marginalized and the mentally ill? Social justice must exist for them. Will those who belong to closely knit groups fulfil the Genealogists' lofty ideals of personal responsibility for one's actions, or will they 'close ranks' and talk about the 'common good' which they imply refers to the majority of the community who resemble them socially, ethnically, politically and economically?

Such questions beg the need to see the community in terms of solidarity. This is a concept which:

Stresses the instinct and the need for all members of society to respect and help each other, and for all organizations and associations to harmonize their functions in the service of their members and the community beyond them. It is a principle which rejects the extreme individualism of the conservative- minded. (Charles, 1998:130-131)

Miller's principles of social justice are complex, changeable and cold, essentially politically and economically oriented, but showing no compassion for the disadvantaged, only an impassive acknowledgment of a 'safety net' to provide basic needs (Miller,1999:41). Miller's principles are challenged because they are calculating, and appear to be driven entirely by economic considerations to the exclusion of the common good, fairness and compassion for the disadvantaged and marginalized, such as the mentally ill.

The question of the inadequacy of Miller's account occurs, because he fails to recognize that the marginalized have been excluded from consideration of the common good. They are not recognized as belonging, but are patronized and not seen as equals, where equal here means having the same right to share in the common good as anyone else. The obligation of each member of society to respect all other members of the community and assist those in need is missing, and is subject to the cool, analytical, judgmental gaze of the Utilitarian Enlightenment individual.

In Miller's defence, he has acknowledged that while he believes in the principles of social justice, he finds the problem of implementing them in the current climate of economic rationalism and globalization almost too daunting (1999:252-262). Globalization and economic rationalism will be discussed in the context of social justice for the mentally ill in Chapter Four. The globalization advocates are seen as wrong in believing social justice implementation to be impossible, because some elements of social justice can have a positive effect on economic efficiency (1999:264). Multiculturalists are wrong to claim cultural differences inevitably lead to disagreement about the meaning of justice, but right to indicate that it can no longer be assumed that the culturally homogeneous nation is the primary universe of distribution (1999:264). Miller hypothesizes that a two handed strategy may be the answer; firstly, we need to look for new ways of promoting old principles, and secondly, we must look at the principles themselves, to see whether they can be followed realistically in the modern world (1999:264). The outlook Miller offers seems dubious.

In all his concern about implementing social justice in the current climate, Miller demonstrates his belief, shared with Enlightenment theorists who build their philosophical views only on the period of time since the divorce of faith from reason, and who reject tradition (Pearson, 1975:145-148). At no time does Miller recognize the possibility of faith and reason linked together in a Natural Law theory, being utilized to provide social justice. Miller takes issue with MacIntyre who describes the present fractured state of society in gloomy tones (MacIntyre, 1985:4-5). MacIntyre is reported by Miller to have disagreed with other moral philosophers and to have written of the promotion of the individual as:

"A sovereign chooser who by his/her own decisions determines the values to live by is in fact the obscure manifestation of massive dislocations in society, and the dissolution of social ties and modes of life which alone can give dignity and meaning to human activity." (Dent in Honderich, 1995, 1995:516)

MacIntyre argues in his recent books: After Virtue (1985), Whose Justice? Which Rationality? (1988), Three Rival Versions of Moral Enquiry (1990), for an attempt to recover an Aristotelian and Thomistic view of morality. Miller rejects MacIntyre's reasoning, and, since he himself does not accept tradition, spurns MacIntyre's recommendations to embrace Natural Law, stating:

(MacIntyre) is committing himself to the revival of a form of life that is categorically, and not merely contingently, excluded by the social structures of the modern world...His account of the decline of morality tells us virtually nothing about how we might hope to revive it under modern conditions...(MacIntyre) cannot help us in our search for a conception of justice to guide the development of modern societies. (Miller, 1999:130)

Miller's statements concerning MacIntyre are challenged, and it will be shown in Chapter Five, that within the mental health care field, using Natural Law as the philosophical foundation for providing that care, and by examples from the Encyclicals and social commentaries of successive Popes since Leo XIII (1878-1903), that they do 'demonstrate how morality may be revived under modern conditions.' (101) In accord with MacIntyre's philosophical views on Thomism and Aristotelianism, a means can be made to find Miller's concept of justice to guide the development of modern societies (Miller,1999:130). Pope Leo XIII is regarded as having ushered in the Catholic Social Teaching of the past one hundred years (Charles,1998:3-30). To Leo XIII, a noted philosopher, is attributed also, the resurgence of Thomist influence on modern Catholic teaching, and the rebirth of Natural Law and Natural Rights as an acceptable model for use by the Church and others (Charles, 1998:3-30). Natural Law will show itself in Chapter Five to be an eminently practical and pertinent way of providing justice for all members of society, and offers a value system in which all may participate. All this is relevant to the treatment offered to the mentally ill at the current time.

6. Conclusion.

In comparing the view of the Encyclopaedists and the Genealogists, MacIntyre has asserted that the Encyclopaedists' conception is that of a single framework in which Reason is divorced from Belief. It has been shown, however, that by sheer diversity of purpose and intent, the differing theories of justice offer different perspectives for debate, so that Rawls's theory of justice differs from Nozick's, which differs from Walzer's which differs from Bentham's, each having the potential to influence socio-economic life and thus social justice. The philosophers from all the different aspects of Enlightenment theories, are, nevertheless, genuinely searching for a single truth, that is, that one theory will emerge as the right one.

The Genealogists on the other hand, do not believe there is a single truth. They affirm there are many perspectives each of which carries its own point of view of truth, but not 'truth as such'. Truth represents an empty notion in an equally empty notion-that of the world itself.

"There are no rules of rationality as such to be appealed to, there are rather strategies of insight and strategies of subversion." (MacIntyre, 1990 : 42)

The viewpoints of these opposing antagonists would appear to be incommensurable with one another. To the Encyclopaedists, the Genealogist is seen as producing yet another version of relativism, with irrational themes and theses. To the Genealogist, the Encyclopaedist is

imprisoned within metaphors unrecognized as metaphors (MacIntyre, 1990 :43), such as the will to power, something both Kant and Nietzsche have in common, without the Encyclopaedists recognizing it as such. It is possible to listen and understand where each protagonist is coming from, but impossible to find a third point at which there may be some commonality. Their viewpoints, asserts MacIntyre, are untranslatable (1990: 42-43). In each case, their views will form the background in this thesis to the analysis of mental health care, in order to see how their interaction has produced social justice or injustice.

MacIntyre is pessimistic. **(102)** He believes we have entered into a new ‘dark age’ which is already governed by ‘the barbarians’ (MacIntyre, 1985:263). This is surely the legacy of Enlightenment (Encyclopaedist) and Post Enlightenment (Genealogist) views. The Encyclopaedists had believed that they were producing universal principles which would appeal to rational justification, but they could not agree on what those principles should be. The result was no longer one philosophy with authentic roots in tradition, but a range of diversities and disagreements (MacIntyre, 1990:189). Alasdair MacIntyre has asserted the Encyclopaedists were right to question the role of tradition when they believed it to be the antithesis of rational inquiry, but in so doing they deprived philosophy of a concept of rational inquiry in a tradition (MacIntyre, 1985:276-7). In this way, they deprived social justice of its foundation in a law and made it vulnerable to whatever interpretation of philosophy prevailed. These statements will be scrutinized within the following chapters when a third way, using Finnis’s Natural Law model will be introduced whenever pertinent.

The theories which have been discussed, will be applied in the following chapters, in order to trace the rationale behind the birth of the asylum, the rise of psychiatry as a medical discipline, and the medicalization of mental illness, against the social, economic and political changes taking place, during and since the Industrial Revolution, right up to, and including, the enormous changes taking place that have affected the mentally ill since World War II. Before embarking on the following chapters, an Appendix has been added to this chapter, in order to clarify the relationships between the philosophical views outlined in Chapter Two and the ethics of social justice.

CHAPTER TWO

APPENDIX 2.1

Human Nature, Personhood and Individuality showing the basis of Human Dignity and Human Rights.

This Appendix is intended to reinforce the basic facts provided in Chapter Two, in order to give a moral foundation to the view that those human beings suffering from mental illness have a dignity and should be the proper object of our moral concern. This aim will be carried through by a brief account of human nature, personhood and individuality, (in which, and through which, Natural Law is exemplified), that shows the ‘social dimensions’ of the human person, the basis of human dignity, and forms the foundation of human rights. The Appendix clarifies the relationship between the philosophical views outlined in Chapter Two and the ethics of social justice. In pursuing the belief that the mentally ill have dignity and a self-worth, and should be the proper object of our moral concern, one is obliged to ask two questions:

‘Why is the good of the community (and its individuals) bound up with bothering to provide social justice for the mentally ill, (and by inference) for all marginalized groups?’

‘What is social justice? Is it a political statement, an emotionally driven concept, a legal statement or an ethical necessity?’

The significance of Ethics in relation to Social Justice.

Social justice relates to all these identities, but, essentially, social justice is grounded in ethics. Moore has described ethics as:

“The question of conduct-what in the conduct of us human beings is good, and what is bad; what is right and what is wrong.” (Principia Ethica, Cambridge University Press, 1903, Chapter 1:1-21)

Aristotle called the academic pursuit of ethics ‘practical’, that is, the subject studied in ethics is human action, and intended that one is only following a course of ethics properly, if:

“One is questioning and reflecting in order to be able to act. That is, in order to to conduct one’s life rightly and reasonably, in the fullest sense ‘well.’” (Finnis, Fundamentals of Ethics, Oxford University Press, 1983:1)

There has to be an understanding of human goods which is anchored in truth. Ethics is not, however, practical because of having human action as its subject matter.

“Ethics is also a genuinely theoretical pursuit, but it is practical because, in choosing and acting and living in a certain way, it is the primary objective of my intellectual enterprise, not just a secondary side-effect.” (Finnis, 1983:3)

Finnis is reaffirming Aristotle's statements, written on the subject matter of ethics, notably in Nicomachean Ethics, (Books I and X, 109-7b 34-1098 a 3), when Aristotle identifies ethics as truth which one is seeking not only for its own sake, nor for the sake of becoming the person who knows the truth about the subject matter, but rather:

"In order that one's choices, actions and whole way of life will be (and be known by oneself to be) good, worthwhile." (Finnis, 1983:4)

To arrive at such an implementation of ethics, we concern ourselves with the basic values of human existence, and also the basic principles of all practical reason (Finnis, 1980:63). Natural Law is exemplified through one's human nature, personhood and individuality. These characteristics demonstrate the social and community dimension of the human person; the community forms the base of the Natural Law model described in Chapter Two, Part B.

Ethics and Human Nature.

Epistemologically, knowledge of human nature is not the basis of ethics; ethics is an indispensable preliminary to a full and soundly based knowledge of human nature. It is a result of one's ethical enquiries about human nature; it is not merely a rhetorical addition; it finds a place in the sober and factual account of what it is to be a human being (Finnis, 1983:21-22). What we require as human beings, ethically, in order to fulfil our human nature according to moral principles, is to be found in Thomistic 'practical reasonableness'. To re-iterate the statement penned in Part B of Chapter Two, Thomas Aquinas, writing in the thirteenth century developed a moral theology. Aquinas's basic approach included:

A theory of practical reason by which moral principles are naturally known (natural law) and confirmed by divine revelation; an anthropology that examines the nature of human persons and that which fulfils them; a moral psychology of virtues both natural and infused that integrate, moderate and direct character; and a theology of grace and beatitude that empowers and motivates agents towards their final goal. (Fisher, 1998:475)

Within this thesis, Finnis's theory of Natural Law is used to incorporate Thomistic moral principles. In Chapter Two, (page 57) Finnis's concept of Natural Law is stated to be:

...One that explicitly with full awareness of the methodological situation, undertakes a critique of practical viewpoints, in order to distinguish the practically unreasonable from the practically reasonable, and thus to differentiate the really important from that which is unimportant...(Such a theory of natural law) claims to be able to identify conditions and principles of practical rightmindedness, of good and proper order among men and in individual conduct. (1980:18)

Finnis's Theory of Natural Law.

This theory of Natural Law has been re-shaped and developed over the past forty years into a philosophical view of Natural Law compatible with providing a value system which answers the needs of the human being in the modern world (see fn note 88). Finnis, in describing one modern concept of Natural Law, has provided a philosophical view which has also been articulated by other philosophers such as Germain Grisez, frequently assisted by the writings of Joseph Boyle Jr. (George, 1988:1385-1389).

Aquinas asserted that the first principles of Natural Law specify the basic form of good and evil, and can be adequately grasped by anyone of the age of reason. They are self-evident and indemonstrable (Aquinas, Ethics (V) lect.12 para. 1018, Summa Theologica I, II,q.94;a-2,q.91,a.3c;q58,a,4c,5c). Principles of right and wrong are derived from these same first principles of Natural Law, and thus of practical reasonableness (Finnis,1980:34). Aquinas and Finnis insist that the basic forms of good, grasped by practical understanding are what is good for human beings with the nature that we have. Further, Aquinas states that to understand the relationship of practical understanding of human nature, one must experience one's nature from the inside, in the form of one's own inclinations (Finnis, 1980:35). The object of the inclination being experienced is an instance of a general form of good, for oneself and for others like one (Finnis, 1980:34).

Part B of Chapter Two of the thesis devotes considerable attention to the development of a Natural Law model in accordance with Finnis's theory. The segments of the model represent the basic principles of justice, authority, obligations, rights and practical reasonableness, standing on a base representing community/society. The segments of the model are joined to each other by the common good. The complete model with all its components is shown to produce social justice. Each segment is carefully explained and it is shown how the model can be used to provide a moral basis for mental health care, and indeed, for the treatment of all marginalized members of society.

The importance of these basic principles used in conjunction with each other and cemented together by the common good depends upon a firm basis of community. Aquinas has stated that we want not only the goods of reason in action and the necessary pre-condition of practical reasonableness (especially sanity), but also the many bodily and circumstantial goods which depend on good fortune, for example, health, wealth, offspring and the pleasure

that perfects good action (Aquinas, Sententia Libri Ethicorum t 16n.11 (197), I-II q 13a, 4c.). Aquinas insists, equally, that the fulfilment of which all one's reasonable deliberation, choice and action are directed is a common good (Summa contra Gentiles IIIc, 4419: 41 [2215] cf I-II q 3a.2ad 2).

In promoting the common good, a thread which runs throughout this thesis, one is demonstrating the 'sound dimensions' of the human person. In promoting the value system inherent in Finnis's model of Natural Law, one is emphasizing the worth of one's fellow human being, and his/her need for life, knowledge, play, aesthetic experience, sociability/friendship, practical reasonableness and religion. All these values were discussed thoroughly in Part B of Chapter Two, where the significance especially of friendship for the mentally ill was given considerable significance. The loneliness experienced by many of the mentally ill will be considered again in Chapter Five in relation to the Burdekin Report.

All these values are of equal importance and are not hierarchically listed. In Part B of this chapter, it was stressed that their use may be demonstrated when they are employed in relation to the building segments of the Natural Law model described above. At any particular moment, some values may be emphasized to highlight a particular need in relation to individual needs. It is important, for example, to assist one to reach his/her potential, not only for the self-esteem of the recipient, but also to remind each of us of our responsibilities each for the other in the common good of all. Throughout the thesis, the 'common good' refers to a set of conditions which enable all members of a community, including the disadvantaged and the marginalized, to attain for themselves reasonable objectives, or to realize reasonably for themselves the value(s) for the sake of which they have collaborated with each other (Finnis, 1980:154-156).

Finnis sees the common good of the complete political community to be entirely interwoven with justice, social justice principles and human rights. On pages 61-64 of the thesis, the relationship and interaction which occur with a community were described as leading to the unity of common action to help others to fulfil themselves. (**see also fn 94**) These unifying relationships include physical and biological relationships, thinking and learning together, applying knowledge including a cultural unity resulting from a shared language, family relationships or common technique, and caring for them and assisting in their development (Finnis, 1980:135). The unification of a community in this way, not only adds to the dignity

and self-worth of the mentally ill, but also develops within all individuals who make up society, the ability and desire to help one's fellow human beings (Finnis, 1980:135). This unity produces the common good and social justice.

Earlier in this chapter, both Gray and Raz were quoted as rejecting Miller's Enlightenment concept of social justice, in that our concern should not be so much with concepts of 'fairness' and 'equality', but rather with compassion for our neighbour's greater needs, whatever they may be. It was stated that in Miller's theory, that cornerstone of Liberalism: individualism, comes to the fore. It was asserted that people of like affinities and affiliations will have little problem in assisting each other. Their social justice, however, may be conditioned and their attitude judgmental in relating to those of a different group, for example, the mentally ill, the destitute and the homeless. Enlightenment social justice may reflect a legalistic scrupulous fairness for the majority of society, but be devoid of an inbuilt obligation one owes to one's neighbour, regardless of his/her similarity to or dissimilarity from ourselves. Such conditional social justice lacks the unconditional compassion which is to be found in the common good.

In fulfilling the common good, there is a mutual obligation on everyone's part, including the mentally ill, to recognize the segment of 'obligation'. The rights of each citizen are balanced with the rights of the individual and the obligations we owe to each other. In Part B of this chapter, it was stated that Finnis uses the term 'human rights' synonymously with 'natural rights', and believes that Natural Law is in fact about human rights (1980:198). Emphasis is laid on one's duty towards each member of the community to act in the common good to the other by being just and contributing to social justice. One example was given of 'rights talk' in *The Universal Declaration of Human Rights*, proclaimed by the General Assembly of the United Nations in December, 1948 (**see also fn 86**). The whole question of human rights and rights and responsibilities in relation to the mentally ill will be addressed in detail in Chapter Five of the thesis. The contents of this Appendix have led to a statement of the preamble determination of that Declaration:

"To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women." (In Robertson, 1999:414-415)

Conclusion

The vulnerability of the marginalized such as the mentally ill, living in a world of economic rationalism and often societal and political indifference to their needs for social justice, is illustrated by reference to MacIntyre's most recent offering to the philosophical debate. MacIntyre has highlighted the importance of those members of society who are dependent upon particular others because of illness or disability, sometimes for their entire lives (Dependent Rational Animals, 1999). MacIntyre has criticized historians, philosophers and members of society who, in all their commentaries on the human condition, give:

"With rare exception, only passing references to human vulnerability and affliction, and to the connections between them and our dependence on others." (1999:1)

Adam Smith reinforces the idea that the norm for society is 'healthy', so that the mentally ill are 'them' and separately 'unhealthy'. Smith believes that to dwell on anxiety, sorrow, diseases, danger and death is misguided, (The Theory of Moral Statements IV, Chapter I), and when he does have to consider these perspectives of ill health:

"...finds reason at once to put them on one side." (Smith in MacIntyre, 1999:1)

This, according to MacIntyre echoes the practice of moral philosophy throughout the ages.

Chapter Two has demonstrated the different philosophical views that have been prevalent over the past two hundred years in the Western World. It will be shown in the following chapters, how by society's ignoring the importance of illness, disability, and the vulnerability of the mentally ill, we have excluded this section of the community from more than a very limited set of possibilities of developing their potential as human beings. It will be shown in Chapter Five, that use of practical reasonableness offers a variety of possible futures for everyone and would rectify this error. There are different sets of goods to be achieved with assorted modes of flourishing (MacIntyre, 1999:75). The profoundly mentally ill may move with very constrained and vague possibilities. Others not so ill may demonstrate skills and talents hitherto unnoticed. All can contribute to the common good as can their advocates who encourage them.

Throughout the past two hundred years, we seem to have assumed that mental illness automatically excludes the sufferer from living as normal a life as possible. In so doing, by consigning the mentally ill to asylumdom, we have ignored the possibility of overcoming many of the obstacles presented by their illness. How the mentally ill may overcome these

obstacles will vary not only according to their circumstances: and the extent of their illness, but also will depend on what other members of the community contribute in assisting the vulnerable members of the group. It is logical, then, to state that the ability of the mental illness to disable each individual depends not only on the extent of the disability, but also on the understanding, compassion and practical assistance afforded by the immediate group, for example, the individual carers, and by the community in which the mentally ill find themselves (MacIntyre,1999:75).

The development of the ensuing chapters of the thesis will demonstrate how significant or otherwise, have been the parts played by social justice and the common good in the treatment of the mentally ill in relation to the obstacles that beset them, especially in Australia during the past two hundred years, and whether the aspirations of the Universal Declaration of Human Rights are being fulfilled currently, in relation to these very vulnerable members of society.

FOOTNOTES: CHAPTER TWO

1. The name, Enlightenment, is given to the period of time which was characterized by the emergence in eighteenth century France of progressive and liberal ideas that began approximately sixty or seventy years before the French Revolution. The philosophical theories of the Enlightenment underpinned the American Declaration of Independence, and have remained influential in Western thinking for the last two hundred years. Increasing scientific knowledge had given rise to the development of empiricist, naturalist and materialistic doctrines, and to strong opposition to clericalism (Flew Anthony, 1979: 106). There was a break with traditional thought. D'Holbach wrote that:

Religion and extranatural beliefs inculcate habits inhibiting inquiry and the acquisition of knowledge necessary to achieve the fundamentals of man's happiness and self-preservation'. (In Flew 1979 : 106)

Consequently, Natural Law which had hitherto been a prominent philosophical view for Europe and had linked Faith with Reason utilizing Aristotelian and Thomistic thinking, fell into disfavour with philosophers outside the Catholic Church, and is only now finding its place once more in the main philosophical arena as a legitimate philosophical theory with strong affirmation for social justice (MacCormack, 1992:105).

2. There is no clear consensus on the concept of justice within contemporary society. This situation may be most clearly demonstrated in people's attitudes towards the issue of abortion. One pro-abortion group believe most seriously and conscientiously that, following the dictates of their individual conscience, a woman has the right to choose whether she will give birth or not. This may be seen as a manifestation of a Nietzschean philosophical view, where belief in a supernatural or Divine Authority is rejected, and the individual is deemed to be personally responsible for making her own moral decisions which are held to be paramount, and not constrained by any external social or moral obligations. The individual is restricted only by the freedom of choice, which is to be employed in any way which the individual decides is morally right for her (Sacks, 1997:117). Equally sincere and conscientious are the opposing group, who believe that a child is alive from the moment of conception, and also has rights, including the right to life. This is part of the value system of Natural Law, in which the desire to have a child is seen as pursuit of a basic form of good: life-in-its-transmission (Finnis, 1980:86).

3. Natural Law as described by John Finnis, distinguishes between the practically reasonable from the practically unreasonable, that is, the important from the unimportant (1980:18,87). This is the principle that is brought to bear upon a set of values, in order to give them a moral force (1980:101). The basic values according to Finnis are:

Indemonstrable but self-evident principles shaping our practical reasoning. (1980: 81)

4. Alasdair MacIntyre has suggested that:

An admission of significant incommensurability and untranslatability in the relations between two opposed systems of thought and practice can be a prologue not only to rational debate, but to that kind of debate from which one party can emerge as undoubtedly rationally superior, if only because exposure to such a debate may reveal that one of the contending standpoints fails in its own terms and by its own standards. (MacIntyre, 1990 :5)

5. Briefly, *intention* is defined by Jonsen as:

A kind of conceptual design present in the agent, the plan of what he aims to realise. This design includes a conception of action, of results, and of norms (Jonsen in Fagothey 1972:24).

Motive is that which determines the agent to aim at the objective and engage in the desired action. John Dewey has suggested that:

Intention is what a man means to do: motive is the personal frame of mind which indicates why he means to do it. (1932:247)

Intentional actions, then, are undertaken for a motive, in the light of which they are objects worthy of attention and pursuit.

Deliberation is a moral act that has been reasoned out, so that one is clearly aware of what one is doing and what will be the outcomes (Fagothey, 1972:29). Aristotle in Nicomachean Ethics described deliberation as:

We take the end for granted and consider in what manner and by what means it can be realised...we continue in this process until we come to the first link in the chain of causality, which is the last in the order of discovery. (III, 1112b, 20)

It would seem, therefore, that deliberation involves both the planning of means to the intended end, and the weighing of motives which incline one to make one or another decision.

Voluntary. The words 'freely' and 'voluntarily' are often used interchangeably. Aristotle confined his treatment of 'voluntary' to a discussion on the finality of human action and the nature of virtue in the first and second books of the Nicomachean Ethics. In the third book, Aristotle comments on the distinction between involuntary and voluntary actions: involuntary acts are principally performed under *constraint* or because of *ignorance*. *Constraint* is described as physical or psychological force, brought to bear on the agent, while *ignorance* is a lack of awareness of the details which make up the situation in which the agent is acting (Book III, 1111a 21, 111, 3, 1113a,10). Aquinas has added that the agent can also be inculpably ignorant of the moral quality of his action, a point which Fagothey suggests, Aristotle seems to deny (1972:31).

Excuses. Here, Fagothey has stated that responsibility is precisely action without excuse (1972:32). The defence of 'doing wrong' may be defended in two ways: by *justification* (that the action was in fact, not wrong but right), and by *excuse*, that is, the wrongfulness is admitted but responsibility is not accepted (1972: 32-3).

Of *Character*, Aristotle wrote that:

...an act could only be called virtuous if it sprang from a stable character. (In Fagothey, 1972:33)

Hume, writing in Enquiry concerning Human Understanding Section VIII part II has stated:

Actions are, by their very nature, temporary and perishing, and where they proceed not from some cause in the character and disposition of the person performing them, they can neither redound to his honour if good, nor infamy if evil. The actions themselves may be blameable; they may be contrary to all the rules of morality and religion. But the person is not answerable for them and as they proceed from nothing in him that is durable and constant and leave nothing of that nature behind them, it is impossible he can, upon their account, become the object of punishment and vengeance. (In Fagothey, 1972:33)

6. By 'way of being' Sartre as a Genealogist, is describing human existence as such. He is stating that the human person creates his/her own existence and is totally responsible: by choice, by commitment in absolute freedom, the self is totally responsible.

7. It was explained in Chapter One, that the typography 'Encyclopaedists' and 'Genealogists' ascribed to MacIntyre, would be applied to Enlightenment and Post-Enlightenment theories, in order to facilitate management of the subject (MacIntyre, 1990).

8. Aristotle, according to Finnis, was tempted to restrict his concept of justice to relations between mature and free equals in the community (Finnis, 1980:163). Plato treated justice as concerned with the relation between three aspects of the soul: reasonableness, desire, and the spiritedness which normally is linked with with reason, so as to overcome desire (in Finnis, 1980:162).

9. The lightbearers in this context were the natural scientists, Newton and Huygens, the philosophers, Locke and Hume, the physician Boerhaave. Gay also writes that the word epitomising this period was *progress* (Gay, 1969 Vol.2 :56).

10. There are several versions of the 'scientific method', but the one devised by Bacon and favoured by scientists especially in regard to medical science, is concerned with the totality of principles and processes regarded as characteristic or necessary for scientific investigations, generally taken to include rules for concept formation, conduct of observation and experiments, and validation of hypotheses by observations or experiments (Mosby's Dictionary St. Louis, USA, 3rd edition, 1990:1057).

11. Central to all Enlightenment views was the absolute belief in the autonomy of the individual, not requiring any authoritative guidance. An earlier philosopher, Hugo Grotius (1583-1645), who was indeed a liberal, kept his belief in eternal truths, and objective values which were independent of individual will and interest, and of limitations on: 'natural individual liberty evident in the law which guides conscience.' (Charles, SJ. 1998:193) There were those who in similar manner, especially in the teachings of the Catholic Church, maintained their allegiance to Natural Law, but for others, such as Clarke, and Hume, contradictory laws were emerging. For those of the Enlightenment period who still accepted the existence of God, He did not have a part to play in the running of the world. Left to its own devices, the world would run like a clock (Charles, SJ. 1998:193). Reason as used by man was the only requirement for harmony in the World.

.*Samuel Clarke*, (1675-1729), was an English rationalist philosopher and theologian; champion of Newton, admired by Voltaire and dismissed as chaplain for unorthodoxy (Downie in Honderich, 1995:136).

.*David Hume*, (1711-76), Scottish philosopher, essayist and historian, was seen by many as the greatest of eighteenth century philosophers. Hume aimed to place 'Logic, Morals, Criticism and Politics' on a new foundation: the 'science of Man'. He was famous for his scepticism in metaphysics; he also insisted that human nature places limits on our capacity for scepticism. Hume's concern is to expose the limitations of reason, and to explain how we make the judgments we do, in the absence of the illusory support of reason. and the theory of human nature (Inwood in Honderich, 1995:377-380).

Three basic aspects of the Enlightenment bear witness to the overwhelming belief in progress through self realisation: the resistance of Enlightenment thinkers to the Christian religion; their interpretation of the future paradise, and their practical attitude toward concrete improvement in society (Gay, 1969 Vol.1:391). Goudzwaard has suggested that the opposition to Christianity was the result of the Enlightenment thinkers professing a faith of their own which collided with the heart of Christianity. Carl Becker was to write that the Enlightenment believed:

1.Man is not natively depraved...2. the end of life is life itself instead of the beatific...3..man is capable, guided solely by the light of reason and experience, of perfecting the good life on earth. 4....The essential condition of the good life on earth is the freeing of men's minds from the arbitrary oppression of the constituted social authorities. (Becker, 1932:31)

12. This differs from the English and German Enlightenment philosophy which seems in a more restrained manner, to believe that change will be brought about as a result of progress. The French Enlightenment,

however, persisted with the establishment of a new social order to implement the new thinking, and this necessitated revolution (Bury, 1920:205,167), in order to destroy those who were identified with the existing social order: the aristocracy and the clergy. The new ideology of revolution followed on the heels of the French Declaration of the Rights of Man in 1789, and has dogged the Western world as a potential threat ever since. It has followed a similar pattern in the Russian Revolution of 1917, where the capitalist was seen as the scapegoat, and in countless revolutions all over the world. While the American Revolution, which preceded the French Revolution was not of the same vehemence, and was essentially involved with the decolonization of America from England, it still had connections with the French. Henry May has declared that the American Declaration of Independence formulated by Thomas Jefferson, bears clear traces of the European belief in progress, although the document itself also may be viewed as an attempt to synthesize Christian Puritanism, deism and the ideas of progress (May, 1976).

13. Natural Law may be seen as having been an expression of Judaeo-Christian morality, whereby, in the Covenant God had made with the human race to protect, nourish and maintain them, human beings also pledged that they would abide by God's commandments. A covenant in this sense, was more than a social contract as described by Rousseau and Rawls *et al.* It implied a commitment: pledging one's alliance in all circumstances, in good times as well as bad. In this way, it was translated into such vows as marriage pledges, in which two people promised solemnly to cherish and live with each other in all circumstances and to bring up children in the accepted moral way laid down by the Ten Commandments (Sacks, 1997: 61-63). This gave a solidarity to the meaning of life and the methodology employed in living it.

14. Included in the Encyclopaedia were articles which were sceptical of religion, favourable to the promotion of a liberal and tolerant social climate, and to the acquisition of knowledge believed to be necessary to achieve the fundamentals of man's happiness and self-preservation (Flew, 1984: 307).

15. Kant's philosophical career is conventionally divided into three periods: the 'pre-critical period', from 1747 when Kant published: On the True Estimate of Living Forces, to 1770, when he published: On the Form and Principles of the Sensible and the Intelligible Worlds (Bird in Honderich, 1995:435). Bird asserts that during this period, Kant was concerned with foundational questions to science, and the search for the proper method in metaphysics.(what really exists and what it is that distinguishes that and makes it possible) (Hamlyn in Honderich, 1995:556). The middle period (1771-80). was known as the 'silent period' because Kant used this time mostly for reflection and study, not publication.

16. By so doing, Rousseau believed that the individual was agreeing to obey him/herself as a law-giver and as a citizen. In this situation, the individual was agreeing to obey the head of state and participating in the formation of that head's sovereign rule. This, to Rousseau, was the essence of the democratic state, a state in which social justice might flourish (in Theophanous, 1993:28-9). Rousseau was thus proposing self-determination, and left citizens to decide the degrees of freedom and equality they would accept for their society (Theophanous, 1993:30-31).

17. Locke's philosophical view became popular throughout Europe, was supported by intellectuals such as Rousseau, Voltaire, who interpreted Locke's words in defence of liberty of the Press, and Beccaria, who argued against unjust and excessive punishment by the State (Robertson, 1999:6). Locke may, therefore, be seen to have had considerable influence on development of the modern language of 'rights' and our concept of 'democratic government' Locke also provided a:

“Secular justification for the participation and representation of citizens in the process of government.” (Buchanan, 1979:105)

This idea, perhaps more than any other, laid the foundation for the belief in individualism which is a hallmark of liberalism. The Enlightenment, besides stressing rationalism, system and order, also encouraged increasing recognition of the rule of law, and another staple ingredient of liberalism: social justice (Buchanan, 1979:105).

“Man by nature (is) all free, equal, and independent, no-one can be put out of this estate and subjected to the political power of another without his own consent.” (Locke, 1690)

18. Megan-Jane Johnstone has written that Utilitarianism is thought to be the more persuasive of the teleological theories on the ground of its ethical universality (1995:86). It is concerned more with the general welfare of people than the particular welfare of individuals, and is generally contrasted with a rights view of ethics. The ethical theory of Utilitarianism holds good that an action is right if it achieves the greatest good of the greatest number of people (Johnstone 1995:86).

19. Henry Sidgwick developed the most sophisticated system of Utilitarianism in the nineteenth century, according to Rawls. Sidgwick argued that society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the net balance of satisfaction summed over all the individuals belonging to it (In Rawls, 1972:22). Sidgwick identified three such methods: intuitionism, universal hedonism (Utilitarianism) and individual hedonism (egoism), reconciling intuitionism and Utilitarianism to his own satisfaction through such statements as

“...future good is as important as present good, and: ...the good of any one individual is of no more importance...from the point of view of the Universe, than the good of any other.” (Harrison in Honderich, 1995:826)

He wrote on many areas, but in his great work, The Methods of Ethics, 1874, provided not an intentional defence of Utilitarianism as much as an account of the ways in which he believed it to be possible to reach a rational basis for action (Harrison in Honderich, 1995:826).

20. Utilitarianism is an impersonal moral view.

Act Utilitarianism requires that one's obligations depend on an impersonal assessment of the consequences of our actions, so that if faced with a choice between doing more for strangers or less for ourselves, we must observe that each person is morally equal to the other (Slote in Honderich, 1995:892). Another example cited by Finnis is that if the problem is whether to pay a debt or give to charity, one must estimate the gains in happiness to be made by either act on that particular occasion (1980: 112-3). Consequently, any favouritism has to be justified by the overall good outcomes for people generally. This is different from the claims of social justice as argued by Natural Law, where the good of *each person* is equally valuable to the Universe. Under Utilitarianism, social justice would be the greatest good for the greatest number.

Rule Utilitarianism is not so concerned to estimate individual acts, but considers the utility of a rule for sets of actions. For example: “Everyone should pay his debts”. (Finnis, 1980: 112-3)

21. Finnis has argued that each of these Utilitarian claims is senseless: they make implausible assumptions, for the reason that the values cannot be quantified, neither added to nor subtracted from each other to provide a ‘net result’. Further, ‘pleasure’ and ‘happiness’ are *experiences*; they do not provide the complete

human good the consequentialist requires to identify before computing a maximum good. All that can be done is to adopt a set of commitments that will bring the basic values into relation with each other sufficiently to enable one to choose projects, to undertake a cost-benefit analysis with the intention of producing a 'best solution' (Finnis, 1980: 112-3).

22. Adam Smith (1723-1790), set out in The Wealth of Nations (1776), a comprehensive moral and social program, based on the study of market forces, and expounding the philosophy of laissez faire (1776: Volumes 1-2).

23 Benthamism fitted admirably into Weber's description of the bureaucratic organization, with its members coming from the ranks of the rapidly developing wealthy, mercantile and industrial middle class families who prized efficiency more than traditional roles, and overemphasized it to the detriment of the other requirements of practical reasonableness (DeFleur *et al*, 1971:217-8).

24. Arthur controlled the penal colony, and the asylum at Port Arthur with the utmost efficiency, administering rough justice in accordance with those times (Gowlland, 1981:150). In such a milieu, implementation of justice was questionable and social justice given scant attention. To provide social justice, a bureaucratic organisation is required to demonstrate just goals, efficient and effective strategies, that is, a balanced system. Otherwise "the tyranny of the majority" observed by de Tocqueville (a phrase appropriated later by Mill) may overwhelm the needs of the disadvantaged and disempowered minority, such as the mentally ill. Mill was impressed by Alexis de Tocqueville's observations in Democracy in America (new ed. 1981:179-183) on the 'tyranny of the majority'. Tocqueville's concern, however, was in the dangers related to growth of individualism. He saw the antidote to this lying in the strength of the family unit and in the community, fortified with the moral and intellectual support of religion (Sacks, 1997:110-111). Mill turned this argument on its head, and defended individualism as essential, and repression of individualism as the enemy. In this, Mill was chafing against social restraint.

25. Preference Utilitarianism considers the maximization of individual preferences as being of intrinsic value, rather than the maximization of the hedonistic pleasures (Johnstone, 1994:87).

Utilitarians currently accept some form of Outcome Utilitarianism, which assesses how much overall well-being people enjoy in a given situation. The major ethical element in most contemporary Utilitarianism is direct consequentialism; that is, the view that the rightness and goodness of any action, motive or political institution depends solely on the goodness of the overall state of affairs consequent on it (Slote in Honderich, 1995:891-892). Beauchamp and Childress translate this as a moral theory that demands the production in all circumstances of the greatest possible balance of individuals satisfying their preferences over individuals not satisfying their preferences, 'value over disvalue.' (in Johnstone 1995:88) In this sense, the risk that individuals might make undesirable preferences is considered by Beauchamp and Childress to be overcome by the belief that people's individual commonsense and past experience will highlight 'undesirable preferences' which can then be excluded on 'more general utilitarian grounds' (in Johnstone 1995: 88).

26. Indifference to the health of minority groups, such as the Aborigines, indifference to abuse of children, perpetuating poor parenting practices, and lack of sympathy for the homeless and unemployed do not seem to have diminished in the current social, political and economic climate, with implications of serious social injustice to all concerned. The then Governor General, Sir William Dean in his 2001 Federation Day speech, made an impassioned plea on behalf of social justice and reconciliation. This was criticised the following

night on the ABC 'Seven Thirty Report' by the Proprietor of the 'Adelaide Review' who referred to: "Sir William Dean's 'dogooders' social justice clap trap." 'Undesirable preferences' are indeed alive and well.

27. In fairness to the Nozicks of this world it must be added that they do not condemn private and personal support for the needy, only a belief that it should not be a mandatory State undertaking.

28. It is suggested that Novak's statement is meant to imply that if the opportunity is there to obtain funds which one may not truly be entitled to, the temptation to apply for them and accept remuneration may prove too much for some members of the community.

29. By inference, rather than making care of the mentally ill State mandatory, Nozick believes that individual members of society should act philanthropically towards vulnerable members of society. Unfortunately, when policies have to be interpreted and implemented by government agencies who may not understand the aetiology of a client's mental illness, the agents' own moral principles are made manifest in their conduct (Hare,1952:1). If their prescriptive language is judgmental, deciding for example, that a schizophrenic patient now in remission looks and sounds 'normal', the principle of subsidiarity may receive scant attention, and the client may be considered to be too accepting of State assistance. It is not so much the philosophy which causes injustice, but its interpretation and its application.

30. Rawls is concerned with distributive justice, and throughout his treatise, emphasizes that the primary realm over which justice presides is the distribution of primary goods. These Rawls states are wealth, position, opportunity, skill, liberty and self respect (1971:7). In supporting Rawls's statement, Andrew Theophanous has affirmed that justice itself is concerned with the basic structures of society because these structures exert a profound influence over people's lives (1994:26). In recent years, John Rawls has been an exponent of the Kantian ethic of mutually respecting autonomous rational wills. He has added his own ideas to form the basis of his own Theory of Justice (Rawls, 1971). In formulating his theory Rawls has confirmed his position as a Neo-Kantian, and stated that he was attempting to generalize and carry to a higher order of abstraction the traditional theory of the social contract as represented by Locke, Rousseau and Kant (Rawls 1972: 11). In this context, Rawls has made a fundamental statement on the meaning of social justice For Rawls, the fundamental concern of any theory of justice must be the ways in which basic rights and responsibilities are distributed by major social institutions, and the decisions these institutions make concerning the division of advantages from mutual agreement and co-operation between members of society. Rawls sees the basic structure of society depending on these decisions (1972:7).

31. Commonsense tells us that we should support a society that promotes fairness, because of the possibility that we may one day, be poor and in need of the assistance that a just society will provide.

32. Nozick's principal objection to Rawls seems to be the belief already alluded to, that property is not in the first instance a common good to which everyone is entitled, because as already instanced, to the Libertarians, materials come into the world already allocated to people in a society that is based on private property. In other words, Rawls is accused by Nozick of assuming an ahistoric situation with respect to property, which is false in our society. Rawls counter attacks with the statement that the hypothetical situation of the original position is, that we extract from our current circumstances including our property holdings, and consider what principles of fairness there should be (Rawls,1972:12).

33. Nozick offers alternative views as fundamental rights. Nozick asserts everyone has the right to accumulate and use property as they wish. Further, Nozick believes that people have the right to protect their property, and to receive fair compensation should their property be interfered with by others (Theophannous, 1994:103). Nozick does not demonstrate that Rawls's argument is invalid. Instead he takes shelter behind limited assertion of justice defined in terms of fundamental rights.

34. The argument here is, that the selfish and arrogant individual who risks his/her future needs from society in the interests of self promotion, would be acting against the principles of rationality, and against the democratic principles of the just State (Rawls, 1972: 138). This defense of private ownership, proposes only keeping that which is needed by the individual for his/her needs and those of dependants. Any surplus should return to society for the common good. The argument supports Aristotle's discussion of:

Private ownership...property ought to be common in a sense, but private speaking generally...possessions should be privately owned but common in use, and to train the citizens to this is the special task of the legislator. (Finnis, 1980: 171)

By common good, Finnis is describing the Rule of Law which has due respect for human rights which embody the requirements of justice. It is a promotion of good for *all* society not just for individuals, nor just for the majority (Finnis, 1980:83).

35. For example, Rawls insists that in selecting principles of justice, that only liberty, opportunity, wealth and self-respect may be treated as primary goods, for the sake of what he terms a 'democratic impartiality' between differing conceptions of human good (Rawls, 1972: 527).

36. Finnis explains his disagreement with Rawls's choice, by the illustration of a parent, or any self-directing individual who holds truth, friendship or any of the other basic forms of good to be of no account. Finnis states that such a person, who never considers whether his/her life plan makes reasonable allowance for participation in the intrinsic human values, is guilty of irrationality and of stunting those in his/her care (Finnis, 1980:106). Like so many of the Enlightenment theories, Rawls's propositions rely on explanations of rationalism, the bases of which are unchanging, but whose interpretations are constantly changing (MacIntyre, 1990:43).

37. The four functional elements of government identified by Rawls are:

- *An Allocation Branch*, concerned primarily with promoting a truly competitive market while simultaneously protecting private ownership of capital property.
- *A Stabilization Branch*, to bring about full employment so that all who want to work can not only find it, but will have a free choice of occupation. This to Rawls is crucial for social justice. Without it, society cannot be deemed to be just.
- *The Transfers Branch*, guaranteeing minimum income and social services. Rawls insists that there must be a reasonable standard of living for all in a just society.
- *The Distribution Branch*, achieving just levels of taxation: in order to preserve an approximate justice in distributive shares by means of taxation, and the necessary adjustments in the rights of property (1972: 276-280).

38. In one stroke, Nozick uses Kant's principle of autonomy to embrace Locke's right of property. As a result of his synthesis of Kant and Locke, Nozick interprets Locke as an expression of individual right, which allows

him to alter its character considerably as a limitation on acquisition. Basically for Nozick, all acquisition is just, provided it does not harm others by violating their rights (Nozick, 1974:176,179).

39. Nozick does not see scarcity of a commodity as a cause for limiting its ownership by one person. Nozick has stated that:

A medical researcher who synthesizes a new substance that effectively treats a certain disease and who refuses to sell except on his own terms does not worsen the situation of others by depriving them of whatever he has appropriated. (Nozick,1974:181)

In this case, Nozick is adding together the raw materials the researcher has synthesized, with the researcher's own mental and physical endeavours. These are all 'pencilled in' to produce the researcher's justification for his refusal to sell except on his own conditions. This means that the researcher in this case is, in Nozick's eyes, justified in exerting his rights of ownership by insisting that use and distribution of the new substance shall be on the researcher's terms, because s/he has put all the ingenuity, hard work and endeavour into developing and producing the substance, and these factors should be taken into consideration when deciding on its ownership and marketing. Examples of the significance of this decision on promoting social injustice for the disadvantaged may be seen below.

-Drahos and Braithwaite have argued in : Information Feudalism: Who owns the Knowledge Economy? (2003), that there is an analogy to be drawn between feudal systems where lords held ownership over land and thus had the power to control serfs, with modern protection of intellectual property rights. They cite the 2001 South Africa court case that saw thirty nine pharmaceutical companies suing the South African government in an attempt to prevent the importation of cheap, generic, anti-retroviral AIDS drugs.

The case represented the culmination of decades of increasing intellectual property protection which has created a world in which abstract property rights are in direct conflict with human rights and public health needs...When knowledge becomes a private good to be traded in markets, the demands of many, paradoxically, go unmet. Patent based R(earch) and D(emand) is not responsive to demand, but on the ability to pay. (Ferris Book Review: "Information Feudalism" In Eureka Street, Vol.10, December, 2003)

Drahos and Braithwaite proceed to declare that this results in billions of dollars being spent on the production and marketing of drugs such as Viagra and Prozac for the West, while tropical diseases are ignored. Further it is stated by the same authors, that the development of anti-malarial drugs is mostly for military personnel and for anxious Western tourists, not for the nationals of malarial infected countries.

40. Even if unearned income through investments is unequal compared with that earned by the majority of the community, the Neo-Right justify it as reward for the risks undertaken and wise choices made (Theophanous, 1994: 101).

41. It is possible to draw a conclusion that in arguing against the morality of a 'welfare state' Nozick and the Neo-Right believe that such philanthropy creates a 'counter culture,' where people may expect to be paid moneys out of proportion to the nil input from the recipients. It is suggested that this is too simplistic an answer: the issues are far more complex, since what flaws there are, will be due to the weightings that are applied in the weighing up of actions in moral decision-making.

42. This brings into focus again, the involvement of government agencies as part of the social contract, to ensure that their interpretation and application of government policy will provide satisfactory care of the

mentally ill who, often unable to work for continuous periods, and yet, to the inexperienced eye seeming to be in good health, may provide many opportunities for social injustice.

An example of mis-interpretation may be instanced by a member of one State Government's mental health branch, who informed the writer that there is no difference in the overall costing out of a patient being treated in hospital during an acute stage of schizophrenia to a patient treated for acute appendicitis. His argument was based on the length of time each required to be hospitalized. This interpretation ignores the environmental factors which may need to be taken into account before discharging the mentally ill from hospital: his/her geographic location, health facilities available to offer support in the community, and financial status. A straightforward clean stitched appendicectomy patient, having been successfully operated upon, may safely be assumed to need very little, if any care in the community, beyond one check-up by the general practitioner. If only the hospital sector is taken into account in the overall costing, then financial and human support within the community sector may be disadvantaged.

43. These descriptive and prescriptive levels of analyses can be fused according to Communitarianists, who assert that society made up of discrete individuals living in a Liberal individualistic State is unworkable. Similarly, an imposition of values from the all-powerful Stalinist State, attempting to subordinate the individual to the will of the State will also be unsuccessful (Frazer in Honderich, 1995:143).

44. Michael Walzer, for example criticizes Rawls, arguing that social justice would be achieved through redistribution of resources in these various spheres and using different distributive principles (in Theophanous, 1994:113-4).

45. While Walzer agrees with Rawls on the question of priority of justice, he disagrees with the way in which Rawls conceives equality. Walzer believes it is impossible to justify a single approach to equality as has been developed by Rawls. Like Finnis, Walzer sees the 'veil of ignorance' as flawed for the same reason of the invisibility of the marginalized and the mentally ill. If there is to be fairness, then we have to take into account a far greater range of inequalities than is picked up by Rawls's Theory. In this, Walzer is correct. The real needs of the mentally ill cannot be seen behind a veil of ignorance, nor will fairness be ensured for those who are marginalized.

46. Regrettably, consciences do not always work in a right manner, while law and order do not always promote the common good. When 'the greatest good for the greatest number' is confronted by 'the common good', the aims may be seen to be incompatible.

47. Libertarians would argue that cheap housing is available for low income earners as well as for the disadvantaged such as the mentally ill, so that safety and shelter requirements are met (Sacks, 1997: 162-163). Over and above this, Libertarians who interpret this theory in an extreme NeoRight sense, might view the responsibility toward a vulnerable member of society, the provision of friendship and desire for friendship, to be an exercise in personal philanthropy. The provision of financial assistance for the disadvantaged, such as the mentally ill, to enjoy recreational pursuits which Finnis would see as therapeutic, Libertarians do not see as a State responsibility.

48. The Genealogists were so named after the works by philosopher Friedrich Nietzsche (1844-1900) whose influence upon European philosophy during the twentieth century has been profound.

Among the many tasks Nietzsche set himself was the tracing of the 'genealogy of morals'. Other like-minded philosophers were included within the group which took its name from this task-hence 'Genealogists'.

Nietzsche believed the philosophical viewpoints and values of the Western World to be flawed, and that this situation would provoke a crisis. He considered traditional forms of religious and philosophical thought to be inadequate to the task, and attempted to develop a radical alternative in order to, if possible, solve the problem. Nietzsche had been influenced considerably by the writings of Arthur Schopenhauer (1788-1860), and developed from this source a belief in the fundamentally non-rational character of the world, life and history (Schacht in Honderich, 1995:621).

49. As a philosopher, Marx sought to marry the tradition of German idealism, especially that of Hegel, with the scientific materialism of the radical French Enlightenment (Wood in Honderich, 1995 524-5). German idealism was concerned with problems of human self-hood, the nature of a fulfilling human life, and people's sense of meaning, self-worth, and relatedness to their natural and social environment. Hegel, however, saw the task of self fulfillment and reconciliation as a philosophical-religious one (Wood, A. in Honderich, 1995:231-232). German idealism saw modern culture as both a scene of alienation for human beings from themselves and others, and also as holding out the promise of conquest of alienation (Wood in Honderich, 1995:524-5).

50. It is important to remember that Marx wrote with a specific time in history in mind, that of the Industrial Revolution in England, when Liberal-(Laissez Faire) Capitalism became a politico-economic force. To elaborate on this point: Liberalism itself had developed after the Renaissance in the Western World, and was confirmed by the Enlightenment.

51. Following the religious wars of the Middle Ages and as a result of Machievellian influence, initially, on Florentine princes as to how to run their political affairs and achieve power without religious and moral scruples, the emergent nation states crystallized their doctrine of autonomous, secular sovereignty (Buchanan 1979:103). Enlightenment views grew with the ever increasingly powerful nation states.

52. Niebuhr has argued that the idea of the autonomous individual could not have come from pagan classicism to which the Renaissance appealed, because pagan classicism had no enthusiasm for the individual person such as the Renaissance shows. Niebuhr asserts that the idea of individualism took Christianity, and merged it with a concept of reason it had taken from pagan rationalism. The result was a concept of individual autonomy unknown either to classicism or to Christianity (Niebuhr, 1954:1-7). Rodger Charles SJ. has described this individual absolute autonomy as the fundamental tenet of the Liberal faith (Charles SJ. 1982 :92).

53. Capital, by definition, is synonymous with 'savings' (Charles SJ. 1998:422). It is what is saved when all necessary expenses have been met. When capital is applied to investment of savings, it can be used to produce the development in technical industry and also of efficiency.

54. From the middle of the eighteenth century a wave of increasing industrialization rolled over Western Europe, beginning in the British Isles (Goudzwaard, 1978:55). Between 1760 and 1770, patents were granted to three inventors who would change the face of the English countryside beyond recognition: to Arkwright for the water frame in 1769; to James Watt for the steam engine also in 1769, and to Hargreaves for the spinning jenny in 1770 (Hill, 1967:207 in Goudzwaard,1978). Subsequently, industries such as the textile, coal and ironworks, taking advantage of these inventions, developed rapidly. This process was accompanied by a rapid growth of new industrial cities (Heilbroner, 1962:82-83).

55. It has been suggested by many historians, that perhaps it was due not only to the presence of natural resources, but also the fact that the English produced a practical rather than a reflective attitude towards progress, because of the more moderate stance that they had taken over revolution. Further it has been stated by Ashton, that England provided the most suitable context for the founding of a modern Capitalist society because its Utilitarian ethics imposed only one moral demand on the new industrialists, that is, to strive for the greatest possible quantity of utilities primarily for themselves (Ashton, 1948).

One has to ask, what caused this cataclysmic change? Pieter Jan Bouman the historian has suggested that the time was right:

No earlier culture had the materialistic, rationalistic, spiritual disposition that characterized, particularly, the bourgeoisie in the Western European around the middle of the eighteenth century. In no other culture did the traditional religious and political forces offer so little resistance as in Europe after three centuries of demolition...a faith in progress we discover in all currents of the Enlightenment. (Bouman, 1972:120ff in Goudzwaard, 1978:56-57)

56. In the new industrialized society, labour was no longer a personal relationship between the lord of the manor and the peasant, or the master and apprentice of the mediaeval guilds. These had involved rights and obligations on both sides. Labour relations now developed into impersonal market relations in which wages were determined on the basis of a quantity of time spent and units produced.

The actual substance of the change in relations meant that in 1802, in England, the work day of pauper apprentices was limited by law to twelve hours. It took until 1842 before children under ten were barred from working in cotton mills, and until 1847 before a general limit of ten hours per day was decreed for women and children (Heilbroner, 1972:86-87).

57. Why had Capitalism gone so horribly wrong? Hammond and Hammond have stated they believe the problem lies in the construct of Capitalism itself (1925:210). They have described how the economic and technological forces on which Capitalism is founded are considered good in themselves and to be related to norms of ethics and social justice, but in such a way that these norms cannot impede the realization of these forces and the promotion of 'progress.' Norms of ethics and social justice are only allowed to play a part *after* economic production has already occurred. Consequently, as shown above, in actual practice, when industrialization practices are unacceptable, corrections made are *limited* and occur *after* the initial errors have been made.

58. Both these leaders (Pope Leo and Karl Marx), in different ways, were condemning the social injustices associated with the implementation of the Industrial Revolution, not industrialization itself. In essence, Marx was perhaps unconsciously addressing the plight of the marginalized and the disempowered, who were not able to contribute to the 'greatest happiness', were not among the 'greatest number' and, therefore, being deprived of justice and the common good.

59. Marx was essentially a product of the Enlightenment, in that he believed in progress and also technology. He was not averse to industrialization, but to its implementation. One of Marx's concerns was, that during the Industrial Revolution, he believed humanity for the first time in human history, had the means to provide for all the basic needs of mankind. The surplus labour power that remained after the production of basic material goods could be used to provide those services which would satisfy, for example, the artistic and intellectual needs of everyone (Theophanous, 1994: 40). This was thwarted by the greed of the employers. The goods produced had to be sold at a profit, and thus a sales niche had to be made in which people would

believe they needed the often superfluous products which were manufactured simply with the aim of making money. This Marx saw as laying the foundation of a materialistic society (Theophanous, 1994: 41-43). It would be difficult to refute his argument.

60. Marx seems to have neglected the significance of the hegemony of education which applauded the perceived gains and importance of the capital system.

Hegemony is a concept used most frequently to apply to political and international affairs, in which one nation demonstrates power over another. In developing the notion of educational hegemony, Antonio Gramsci saw the significance of the educational system to support the political and social power. Gramsci foresaw that in producing a counter-hegemony, there would be a possibility of changing the thinking of the 'subaltern classes', and would enable them to recognise their ability to occupy leadership roles, to change the cultural pattern of society, and to develop a new hegemony (Prison Notebooks 1971:126). Gramsci believed that the current curriculum reinforced the conditioning of the 'subaltern classes' into their acceptance of a subordinate position in society, in politics and in all facets of life, whereas the ruling classes received an education whereby the educational hegemony supported their belief that they were to be leaders in every possible way (Cammett, 1967: 206-7). Gramsci also believed that education must reinforce the confidence of the individual, regardless of his/her social and economic status, not only so as to reach leadership positions, but also to understand how to reinforce and hold leadership for the benefit of all society, not just an elite, and how to use power wisely (Prison Notebooks, 1971:90). In this argument, Gramsci showed his divergence from the thinking of Marx who approached power by focusing on force and coercion, which were likely to (and did in the form of Stalinism) produce dictatorship.

Gramsci, rather, wrote (from prison in Italy where he was detained on the orders of Mussolini), of intellectual and moral hegemony as the form of power: 'which gives stability and founds power on wide-ranging consent and acquiescence.' (1974 :133) Regrettably, his rejection of the use of force in order to produce power, did not influence the distorted Marxism which prevailed after 1917 in Russia. Gramsci has special significance for the health professions, where the self esteem of individual professionals, for example nurses, has been low and their value to the community and to other health professionals under valued.

61. The arguments against capitalism in USSR were manipulated in order to introduce totalitarianism, in which the dictates of the State were omnipotent (Charles SJ. 1998:86-87). B. Reddaway, writing in Russian Political Hospitals, (1977) stated that during the reign of Stalin, institutionalization of the mentally ill took on a sinister mantle, with confinement of political dissenters for political reasons under the guise of insanity. Orthodox Marxism has never been implemented in the Western World in a real sense, but it has been important in fashioning a view of equality and social justice, and when combined with the philosophical viewpoints of Nietzscheanism, has had a profound effect on political parties, movements and academic thinking as will be shown in the succeeding chapters of this thesis (Theophanous, 1994: 37).

62. It is contended by Marxists that Marxism was an influential factor which led to the adoption of the Universal Declaration of Human Rights, 10 December, 1948, as a means of counteracting Stalinist Communism. Others have argued that the presence of the Socialist Democratic Societies and the Welfare State in the West, were responsible for the Universal Declaration. Marxism in recent years has been discredited in the Western World with the fall of Communism in Russia, but although Communism in the form of Stalinism has been rejected, Orthodox Marxism itself continues to be influential. Its views of

exploitation, of greed and of social injustice to the underprivileged and marginalized, still hold good when planning policy and mental health care today.

63. Nietzsche asserted that the struggle for mastery, and envy and resentment of those who achieved it, were the roots of modern morality. Even abstract claims to rationality were the subject of discrediting. They were held to be fronts behind which nothing but the struggle for power is hidden (Schneewind in Singer, 1993:154). Nietzsche, like Marx, was writing for a particular time for a particular society. It was a time of smug self-satisfaction in bourgeoisie circles of the Western World. Progress seemed unstoppable, technology was ever developing, the social mores had been structured to provide many restrictions, and a word much in favour since Captain Cook's discovery of the Polynesian culture was 'Taboo'.

The concept of taboo became prominent during the Victorian age, because of the rationalist approach by Victorians to religion, and also the place of taboo in the restrictive Victorian society itself (Steiner 1956:50). In its Polynesian medium, taboo meant something restricted to the use of a god or a particular class. It became synonymous in England from *cir* 1700 with the restriction of the use of a particular thing, place, action, word or person to certain persons from ordinary use or treatment, especially from the underprivileged (Oxford Dictionary, 1973).

64. O'Neill writes of Heine who depicted Kant as:

"A bold revolutionary who killed deism: then timidly conceded that practical reason could 'prove' God after all. Nietzsche less kindly likens him to a fox who escapes- then slinks back into the cage of theism." (O'Neill Onora, "Essay No.14," in Singer, 1995: 180)

65. The theory of postmodernism is believed to have been best expressed by the French philosopher Jean-Francois Lyotard in The Postmodern Condition: A Report on Knowledge (1979) (in Sim, 1998:3). This viewpoint is termed 'antifoundational', since it disputes the validity of the foundations of discourse, and includes the discourse of deconstructionism, which is synonymous with postconstructionism. The latter is described by Stuart Sim as, essentially, a broad cultural movement spanning various intellectual disciplines that has involved a rejection of not only structuralism and its methods, but also the ideological assumptions that lie behind them (Sim 1998: 5).

Structuralism itself, was developed as a method of approach in social science by Claude Levi-Strauss, an anthropologist, to analyze myths as attempts to resolve problems of human existence and social organization (Sim 1998:4-5). Its other meaning is related to the structural units of language, and was elaborated on by Noam Chomsky, based on the study of linguistics by Ferdinand de Saussure in his posthumously published book, Course in General Linguistics (1916). In this, Saussure designed a linguistics model, in which all details of a narrative played a significant part in the formation of the end product (in Sim, 1998:4-5). There were to be no loose ends. The deconstructionists, such as Jacques Derrida, took issue with the thinking behind such a model, and directed their attention to refuting the idea that all phenomena were reducible to the operations of systems, with their implication that the human race could completely control the environment (in Sim, 1998: 4-5). Derrida attempted to demonstrate that language and systems were unstable, having an inherent indeterminacy of meaning (in Sim, 1998: 5-6). Sim has alleged that the emphasis on difference, on what fails to conform to the norm or to system-building that is expressed in deconstruction, is very much part of the postmodern ethos (in Sim, 1998: 5-6).

66. Semantically, one may compare the relationship of Foucault's philosophical view to that of Nietzsche. Whereas Foucault describes an 'archaeology' of thinking, indicating his concern with a framework within which to consider an earlier condition or earlier times, Nietzsche portrays his ideas as 'genealogy' in which he is considering the dynamics within the framework. In this context, their approaches are quite dissimilar (Bernasconi in Honderich, 1995:288-9).

67. Foucault made further unsubstantiated assertions that the Catholic Church had exerted social control over 'the sick' labelled as 'lepers', and confined them in numbers of Leprosariums throughout Europe during mediaeval times. Five hundred years later, when 'leprosy' seemed to have been eradicated, Foucault alleged that the Church turned its social control towards those deviants who were termed 'mentally ill,' and locked them into the empty buildings in what Foucault termed 'the great confinement.' (Porter in Scull, 1993:6)

It is curious that having built an argument to demonstrate the rupture of thought that Foucault alleged to have occurred at the end of the the Classical Age, he should then without any substantiation, bring in assertions such as these, describing actions of a pre-Enlightenment time which Foucault himself has described as 'fantasy' (Pearson, 1975:145). In a contradiction of statements, Foucault has simultaneously asserted that the mediaeval madman roamed free (1987:67).

68. This has been interpreted by hostile groups, including Sacks, as freedom without guidance, without constraints: a world without meaning. This is not totally correct; Sartre did indeed emphasize the need for the individual making one's own choices, but this did not mean that people were to be devoid of moral principle. Choice was not necessarily to be open ended.

69. This division between 'is' and 'ought' has been a widely accepted interpretation of the passage since the nineteenth century. Another interpretation, according to Finnis, is that the passage is part of Hume's attack on the eighteenth century rationalists (Finnis, 1980:37).

70. Again, it is in the interpretation of the philosophical view that errors may occur. In this environment, with so much responsibility thrown on to the individual to interpret morality and act accordingly, with no outside guidance deemed necessary to assist conscience, choice may become open ended. All choices may be seen as equally valid, to those who wish to justify their stance. In such a situation, there is no such commitment as that of a Covenant. Jobs, relationships and life-styles can become temporary engagements, in which there are no moral bonds, and we are all replaceable in our temporary roles (Sacks, 1997: 96-97).

71. The accusations of Foucault and of the genealogists in general were, that society was utilizing incarceration to maintain social control and power over the disempowered. Laing and Szasz went even further, declaring that mental illness was a myth invented by psychiatrists who acted as power brokers (Laing: 1960; Szasz:1974). Laing believed that the schizophrenic individual, for example was 'playing at being mad', and in fact demonstrated a gifted mind-a sane response to a mad society (Shorter, 1997: 276). Thomas Scheff asserted that the real problem in 'mental illness' was 'labelling'. (Shorter, 1997: 276) The sociologist, Erving Goffman published *Asylums* (1961), in which he wrote that there was no justification for confining a patient with a psychiatric illness. The underlying assumption was that there was no such thing as mental illness; it was just another attempt by a powerful clique (psychiatrists) to seize and maintain power while disempowering a deviant group of society (Goffman, 1961 121-155).

72. With the onset of the Viet Nam War, in both USA, and Australia, there was a general dissatisfaction in the air. How much of it was disillusionment with Enlightenment thought and how much was a general

disaffection with society is difficult to determine. The taking for granted of welfare benefits may have been linked to the distance in time and changes in social circumstances that made pre-1939 privations a forgotten memory to many, and an inconceivable situation to the younger generation.

There were social implications to this selfish attitude which were not at that time considered seriously. Where others are not considered, the inadequate, the mentally ill and those who respect the rights of others may be trodden down or ignored by the powerful, the wealthy, and by greedy opponents.

Rodger Charle SJ. has reinforced the view that it is false to believe that doing one's own thing and allowing others to do the same is not injurious. Social mores exist to protect the human being's dignity and penalize the degradation of the human person (Charles SJ.1998:194).

73.-*Logical Positivism*: was a twentieth century movement also known as 'the Vienna Circle', because of the influence of certain thinkers in Vienna during the 1920s, including Otto Neurath and Moritz Schlick who propagated positivist ideas. Later, the movement included non-Viennese thinkers such as A.J.Ayer, Arne Naess and Ludwig Wittgenstein. According to Ayer, the 'principle of verifiability' is central to the doctrine of logical positivism. This states that sentences are meaningful according to the steps taken to determine their truth or falsehood. Most positivists classify metaphysical, religious, aesthetic and ethical claims as meaningless, stating that ethical claims would only have meaning if they were able to be proved empirically. Such thinkers are admirers of science, and see the foundational claims of science as being the most verifiable, each foundational claim having its own truth value. Thinkers such as W.V. Quine and R. Rorty attacked these concepts, and the whole movement was no longer a significant force by the 1960s (Fotion in Honderich, 1995:507-508).

-*Rationalism*: describes any of a variety of views emphasizing the role or importance of reason, usually including 'intuition', in contrast to sensory experience (including introspection), the feelings, or authority. Rationalism can also oppose reason to authority, particularly to religious revelation, and the name has been used in this sense (although not usually in philosophy), since the end of the nineteenth century (Lacey, in Honderich, 1995:744).

-*Materialism*: may be considered from a metaphysical point of view, and also as a doctrine about values. The first concept is concerned with the composition of things, and was first described by Democritus of Abdera in the fifth century. Democritus believed the world to consist of hard, tiny pieces of matter which could not be compelled to change shape. In recent times, the concept has been transformed by such concepts as Einstein's theory of relativity. The second concept refers to the materialist pursuing ends connected with bodily pleasures (Lacey in Honderich, 1995:532).

74. It is believed that there was a genuine desire during the 1950s to assist the mentally ill to return to the community, by encouraging their placement within the community and promoting deinstitutionalization. By denying the concept of mental illness, however, and by the rapid decanting of the asylums into the unprepared community from the 1970s onwards, without adequate economic or professional human resources, the mentally ill were vulnerable, for example, to exploitation by unscrupulous hotel keepers and landlords, and frequently met with serious social injustice as will be shown in Chapter Four (O'Sullivan, 1981:15).

75. Plato treated justice as concerned with the relation between the three aspects of the soul: reasonableness, desire and the spiritedness which normally is linked with reason, so as to overcome desire (in Finnis, 1980:162).

76. Finnis's concept of justice, however, is wider than that of Aristotle, who appeared to restrict his theory to relations between mature and free equals in a political community(Nicomachean Ethics, V.6:1134a25-b17). Finnis acknowledges that also, he frequently refers to Aquinas because:

“On any view he occupies a uniquely strategic place in the history of Natural Law.” (Finnis, 1980:vi)

77.-*Neo-Kantianism*: describes a family of schools in German philosophy during the period approximately 1870-1920. It was marked by ‘repudiation’ of irrationalisms, speculative naturalisms and positivisms (Beck in Honderich, 1995:611). Irrationalism here is defined as the opposite to reason or principle, as distinct from the mere tendency into *ad hoc* illogicality or unreason (Wiredu in Honderich, 1995:418).

-*Naturalism*: broadly refers to firstly, the view that everything is natural; that is, that everything there is belongs to the world of nature (everything that there is in the physical world of experience), or secondly, it refers to the living world, past and present, as opposed to the non-living world in relation to humans and the consequences of their labour (Ruse in Honderich, 1995:607).

-*Virtue ethics*. There is a difference between traditions of moral theory that focus on virtue, (classed together as ‘virtue ethics’) and approaches to ethics that make room for an account virtue(s) only, along side, and by way of supplementing, the main business of formulating the ultimate principles of rules of morality (Slote in Honderich, 1995:900). In the latter case, virtues are:

Effectively a set of moral principles (and are) dispositions to obey or follow what the rules prescribe, as mainly with Kantianism, or else, (as with direct utilitarianism) to dispositions whose existence furthers the same goals as are specified in principles of Right action. (Slote in Honderich, 1995:900)

Slote has asserted that ancient (virtue) ethics described four central ethic virtues: temperance, justice, courage and (practical) wisdom. During the Middle Ages, Christian philosophers tended to add three theological virtues: faith, hope and charity or love, to this list (in Honderich, 1995:900).

Socrates, Plato and Aristotle subscribed to a pivotal doctrine: that of unity of virtues, in which each virtue requires one to be sensitive to potentially inconsistent claims deriving from the other virtues. The aim is to reach an end result where one cannot possess one virtue without possessing them all. (Slote in Honderich, 1995:900)

Slote states that this theory is not accepted by all philosophers of modern times. What is widely accepted from ancient times, is the idea of virtues as dispositions rather than skills. For example, one who is able to control his/her appetite but does not do so is not considered as temperate. There is also wide discussion as to whether the virtue of ‘duty’ should be morally preferable to ‘compassion’ or love (Slote in Honderich, 1995: 900).

There are now, according to Slote, many philosophers who believe a focus or virtue can be:

“The basis for an entire free-standing account of morality and ethics”. (Slote in Honderich, 1995:900)

78. Universal Justice is of great significance for the mentally ill, because of the various State Mental Health Acts which specify the conditions under which the clients may be deprived of their liberty by reason of illness, either for their own or for the community's safety. The provision for confinement and discharge from the institution are all governed by these Acts, which were alluded to in Chapter One (pp. 7-8), and will be referred to again in Chapter Five in relation to the Burdekin Report. Provision for treatment relates to the individual within the community, and therefore, to interpersonal relations. Universal justice relates also to the responsibilities of the legislator to provide just law, and to the individual to obey such law. Acted upon in

this way, justice produces *social justice*, that is, justice in society, in which legislation provides for the structure for all to develop their potential, and individuals themselves contribute according to their abilities, to the common good (Finnis, 1980:396).

79. Some Enlightenment writers, such as Miller, take issue with the Aquinas belief in distributive justice, describing Aquinas's view as desert according to *station* (1999:129). This is not so: Aquinas was affirming that distributive justice relates to deserved desert for service rendered to society. It does not ignore the marginalized who, each in his/her own way, contributes to the common good. Distributive Justice relates to equilibrium in, for example, the distribution of honours and goods which are the State's gift: these are distributed proportionately. It is significant to this thesis in relation to what resources, both economic and human, should be allocated to mental health care, as opposed to other social goods. The distribution of goods must serve the common good; by the law of social justice one class is forbidden to exclude the others from sharing in the benefits of economic and social development (Charles SJ. 1998:66).

80. Charity is also considered by many advocates to equate to 'unconditional love for one's fellow human being', and forms a strong part of the Christian ethos. Easy to pronounce, but extremely difficult to implement, such a manifestation of social justice implies the acceptance of all members of the community regardless of race, colour, creed or life-style as well as our treatment of them dispassionately and with total commitment, whatever their way of life may be. In so doing, it is essential in terms of universal justice, that members of the community, collaborating each with the other, use the means of collaboration as means of assistance, not as ends in themselves. In this way, individual initiative is not stifled, and the personal desire for independence is not extinguished (Charles, 1998 : 396).

81. An example of unjust behaviour which disregards the Principle of Subsidiarity occurs when an individual abuses a social security system, obtaining moneys that are not available for the common good. Unjust behaviour offends against social justice. Throughout the thesis, social justice will be related to each of the categories of justice, and when instancing examples of social injustice, it will be possible to refer to the theory which characterizes them.

Another example of misunderstanding of the principle of subsidiarity may be instanced by the experience of the writer as Secretary for Social Justice to a Diocesan Synod, in recent years. In answer to a questionnaire, at least fifty replies were received from collective groups of Catholic secondary college young men and women, (years 10-12). The theme of nearly all their replies was, that the Church was misguided in assisting members of the Third World either by means of money or practical assistance. It is, the young people asserted, well known that poverty acts as a splendid means of motivation to encourage people to get themselves out of their state of poverty and to improve their conditions of living.

82. The requirement of fundamental impartiality, using the Golden Rule of Judaeo-Christian ethics is equally important. The Golden Rule of helping all in need (a positive need of the New Testament), is based essentially on the Decalogue or Ten Commandments of the Old Testament, which became the norms for daily life of the human being, and may be described in their institution as negative norms (do no harm...) Such negative norms are described by Fisher as:

"Common absolutely...and this is ultimately the basis of the inviolability of basic human rights." (1998:481)

The positive norms were explained by Christ who re-articulated the Decalogue in terms which confirm and expand the Natural Law. The precept 'thou shalt not kill' becomes a charge to maintain a reverence for life and non-vengefulness, non-resistance, and an active will for reconciliation with enemies (Fisher, 1998:473).

'Thou shalt not covet thy neighbour's goods' may be turned positively thus into the Golden Rule of assisting one's neighbour, treating him/her as one wishes to be treated oneself.

83. One statement by Finnis emphasises a matter that has been of concern to psychiatrists:

"The lawyer systematically strives to use language...(so that) he can read off definite solutions to definite problems." (1980:279)

This belief has been at the centre of the tension that has existed between psychiatrists and lawyers for two hundred years. Law is precise in its meaning: the psychiatrist voices an opinion in accordance with his/her experience. The lawyer defines 'safety' narrowly and exactly. The psychiatrist views it on a scale of probabilities. S/he cannot guarantee that a mentally ill client on release from an institution will be totally safe for him/herself or for the community. It is this imprecision which lies at the heart of the struggle between the two professions for control, power and dominance over the treatment of mental illness.

84. Unanimity is not a practical possibility over a long period and in, for example, the political community, because the complex common good includes all aspects of individual well being. Further, the community is not Utopia; it is made up of people, some who are intelligent and dedicated to the common good, as well as those who are prone to selfishness and foolishness (Finnis, 1980:233). Within the community, subsidiarity recommends that individuals and small groups, such as the family, should bear a certain responsibility for their own good; however, to co-ordinate the individual good and produce an overall common good requires one who is responsible for that overall care. By currently accepting the mentally ill to live in the community, but knowing that such individuals may need assistance to conform to acceptable social and legal practices, those responsible for their well being are acknowledging the obligation of assisting in their rehabilitation, their re-education, their acceptance into the community as part of the common good. Mentally ill individuals cannot be ignored, shunned or fed fatuous clichés about their 'rights' or about 'making choices' when such jargon is incomprehensible to them.

85. Finnis asserts that the modern 'grammar of rights' enables all the requirements of practical reasonableness to be expressed, and explains that his entire discussions of practical reasonableness, justice, authority, law and obligations are translatable into the vocabulary and grammar of rights (Finnis, 1980:198-199).

86. The Declaration contains Thirty Articles: Articles 1 and 2 state that: 'All human beings are born free and equal in dignity and rights'. Articles 3-21 list the traditional civil and political rights; that is, security of the person, equity before the law, and freedom of movement, of thought, conscience and religion. Articles 22-28 are concerned with the newer economic and social rights, such as equal pay, leisure, social security, and education. Articles 29-30 express the interdependence of the rights and duties of the individual in relation to the respect due to the rights of others (Suter, 1978: 8-20).

87. Standards have been developed more recently, to address specific types of discrimination of vulnerable groups of peoples such as the mentally ill. *The Declaration of the Rights of the Disabled Persons and of the Mentally Ill* was adopted by the United Nations in 1975.

88. Among the values:

-*Life*: corresponds to the drive for self-preservation (1980:86). Finnis also reminds us of the wide scope of this value; it includes every aspect of vitality which puts a human being in good shape for self-determination (1980:86). This term must surely include the phrase, so beloved of sociologists and health professionals: 'a quality of life', a subjective term which implies a standard of living which imparts a feeling of self-dignity and esteem.

-*Knowledge*: Finnis states knowledge is both a good in itself and it is an intrinsic good that is desirable for its own sake, and is also a means of satisfying one's curiosity and making intelligible one's activity and commitment to that activity (1980:62).

-*Play*: in Natural Law, play is believed to contribute to human well-being (Finnis, 1980:87). It provides enjoyment for its own sake, and has a value of its own.

89. By including religion, it does not contradict the original statement, that this thesis will not focus on the metaphysical; it is merely stating that it would seem unreasonable not to consider as reasonable, a possible relationship between the human being and the divine, between the 'origins of the cosmic order and of human freedom and reason', whether the answers are found to be true or false (Finnis 1980:89). For, as Finnis reminds us, even Sartre, in stating that God does not exist, therefore 'everything is permitted', acknowledges that he is obliged to act with freedom and authenticity, and to will the liberty of other persons equally with his own, in choosing what he is to be, because prior to his own choice, 'man is and-is-to-be-free'. (Sartre, 1946:36,83-4)

90. On 15 May, 1891, Pope Leo XIII, a profound Thomist philosopher, who promoted the resurgence of Thomism in the Catholic Universities in Rome during the nineteenth century, (MacIntyre, 1990:72) issued an encyclical: *Rerum Novarum*. (in Charles, SJ. 1998:135). This is known as the first great encyclical of the Church in the Modern World, addressing the problems of the Industrial Revolution and the plight of the workers. Forty years later, in the encyclical *Quadragesimo Anno*, 15 May, 1931, Pope Pius XI, facing a Western World of severe economic depression and the rise of dictatorships, reinforced the social teaching of the Church. He coined the phrase 'social justice' that is, justice to which each member of the community contributes for the common good (in Charles SJ.1998:15-23).

One of the positive aspects of the time of great change following World War II was the shift in social attitude within the Catholic Church, culminating in The Council of Vatican II (1961). By means of this Council, Pope John XXIII opened up what had stultified over the centuries: the *aggiornamento*. Donald Dorr has written feelingly of the Social Justice Agenda of the Church, which ranges across a variety of fourteen items from the gap existing between rich and poor (here he includes the gap between those who are able bodied and the vulnerable such as the mentally ill) to human rights, justice for women, peace, and implementation of justice within the Church itself (Dorr 1992:1-42). Again Dorr stresses the need to internalize the values of Natural Law and especially the common good, as expressions of social justice. To implement the latter, Dorr sees it as of paramount importance, that the Church: that is, priests and laity together, have a responsibility not just to proclaim social justice, but to live as witness to its beliefs, values and opinions (Dorr, 1992:39). To do otherwise, causes a loss of credibility in one's beliefs and morality, to the disadvantage of the vulnerable such as the mentally ill who depend for compassionate justice on those who are more able.

91. In Western philosophical tradition, these values have been declared the first principles of Natural Law, because they lay down outlines of everything one could reasonably want to do, to have and to be. Used in conjunction with practical reasonableness, they enable one to make wise choices and employ good judgment in the common good.

92. There are many ways of understanding the basic human goods, and it is suggested that any of these understandings will, upon reflection, combine with those mentioned in this chapter. Nevertheless, some people will distort them by cruelty, selfishness or in some other way such as ignoring the needs of others in a selfish pursuit of possession. This does not alter the fact that these values are to be pursued, and are to be pursued because they are what leads us to the good; all are equally fundamental and important in themselves (Finnis, 1980:105-106).

93. *-Conscience:* As a theorist, Aquinas appears to have formulated the requirement that conscience is an act by which the human being makes moral judgments so that it follows from an understanding of conscience as that by which we determine to act in a particular way, and to follow the dictates of one's conscience whether in error or not. These dictates may nevertheless be wrong, if one has chosen wrong reasoning. Judgments may be clouded by self-interest, by ignorance of the facts, or because of misjudging the results of certain actions. This requirement to obey our conscience expresses the dignity of even the mistaken conscience, because practical reasonableness is not to be seen as merely a mechanism for producing correct judgments, but as an aspect of personal full-being, to be respected whatever the consequences (Finnis, 1980:126). A conscience needs to be nurtured, taught and developed, for example, within the family environment, the school, with companions, and through social mores. If a conscience is well formed, then the decisions will be the right ones supporting the common good.

-The common good The common good is, therefore much wider in its interpretation and implementation than 'the greatest happiness for the greatest number' envisaged by Utilitarianism. It includes the marginalized, such as the mentally ill, who are to be given the opportunity to participate in the community and to develop their potential. Finnis describes a community itself as: 'an on-going state of affairs, a sharing of life, of action or of interests, an associating or coming together.' (Finnis, 1980: 135)

The term 'common good' is used to convey three different senses: the common good of the basic values, the common good of each individual human value, and a third, not radically separated from these two: 'the all-round or complete political community', which is synonymous with the 'general welfare' or the public interest (1980:156-157).

94. Finnis, using Natural Law, encompasses all members of the community, using the term 'community' as synonymous with 'society' to include the disadvantaged, the marginalized, and those who for a variety of reasons cannot contribute to active work. If they are unable to actively participate, then those who are able to do so must assist their disadvantaged fellow-members (Finnis, 1980: 154-6). (See also pp. 73 ff of this chapter).

95. *-Other-directedness* (one's interpersonal relations, as well as one's relationship between those in authority and members of the community),

-Duty, and

-Equality (Finnis, 1980:161-162).

-Duty relates to what is owed to another to prevent a wrong being done, and, conversely, what the other person has a right to. By calling something 'just', the assertion is not being made that this is the *only* way of avoiding a wrong, but stating that it is a way of avoiding what in reason, must *not* be done in the other relevant other-directedness fields. The third element (Equality), may be presented as an expression of arithmetical equality, such as $2+2$, or of a geometric equality: $1:1=2:2$. To prevent misunderstandings, Finnis suggests that this element is best described in terms of equilibrium or balance (Finnis 1980:163). These terms of comparison still need to be considered in any assessment of proportions. For example, the provision of large quantities of time and care in rehabilitating a client who is living in isolation and has recently been discharged from hospital following an acute schizophrenic episode. This may be compared with the small and perhaps *different* needs of a patient, recently discharged to a comfortable home into a caring family group, following a major but successful surgical operation.

96. Miller has stated that John Stuart Mill and Henry Sidgwick referred to social justice which they associated with distributive justice. Miller believes that the term 'social justice' was introduced by Liberal social philosophers of the Enlightenment period in a fairly haphazard manner, in order to discuss political economy, social ethics, and the justification of various types of private property (Miller, 1999:3; J.S. Mill "Utilitarianism", Chapter 5, in J.S. Mill, Utilitarianism, 1972).

97. It seems paradoxical that the term 'social justice' should be embraced more readily by Liberals than by Socialists. This may be explained as resulting from the actions of Marx and Engels, who denounced justice as the pawn of bourgeois ideology (Miller, 1999:x-xi). The role of Marx and Engels as Socialists in denouncing the worst excesses of the Industrial Revolution were discussed earlier in this chapter. Miller has stated, however, that the Socialist challenge for political power forced Liberals to look more critically at:

"Land ownership, private ownership of industry, inherited wealth and other features of capitalism." (1999:3)

98. Miller sees these three premisses defining the circumstances of social justice, and in so doing, defines the parameters of the basic structure of society to include:

"Practices and institutions like these whose individual repercussions are quite local, but when taken together, produce society-wide effects." (1999:12)

99. -.Solidaristic community: describes a situation in which people share a common identity as members of a stable group, sharing a common ethos. This is encountered in the family, and may extend to, for example, clubs, professional associations and religious groups. In such a group, the principle of justice may be viewed as distribution according to need, and a distinction may be drawn between needs (a matter of justice) and wants (Miller, 1999:27).

- Instrumental association: people relate to each other in a Utilitarian manner. In this example, economic relations are involved in the model. Here the relevant principle of justice is distribution according to desert. This principle may be complicated in interpreting the desert. For example, while the medical profession may regard a psychiatrist as a highly competent specialist, society may put a higher value on the General Practitioner, seeing him/her as a 'hands on worker' at the 'coal face' of everyday problems.

- Citizenship: in modern Liberal democracies, members of a political society relate to each other as citizens as well as through the first two principles mentioned above. Not only as citizenship capable of legal definition; it may be understood as:

"A common social and political status that may be appealed to in criticism of existing legal practice." (Miller, 1999: 30)

100. Various political bodies have exploited the idea of separating those receiving basic subsistence from the community by calling them 'dole bludgers', thus further segregating them from the mainstream of society.

101. MacIntyre has written:

Progress toward knowledge is mapped, and truth is understood as the relationship of our knowledge to the world, through the application of those methods whose rules are the rules of rationality...Ethically, they are a set of conceptions of duty, obligation, the right and the good, which they believe to have emerged from, and be superior to pre-Enlightenment predecessors in regard to rational justification and genuinely moral conduct. (1990 : 42)

102. MacIntyre warns that modern moral philosophy is in a state of grave disorder. He suggests this is the result of misleading and betraying moral language and of a blind reliance on ideas that have claimed false independence from the cultural, social and historical milieu in which they have been generated (1985 :256). Refuting the authenticity of rational morality and its activities, he asserts that a 'rational' approach is not rational (1985 :9).

CHAPTER THREE

THE CONCEPT AND PRACTICES OF INSTITUTIONAL CARE (ASYLUMDOM)

1. Introduction

Prior to the nineteenth century, treatment of the mentally ill did not constitute a separate branch of medicine. General physicians attended to their needs, together with those of all other patients, using the context of humoral imbalances or fevers for prescription and treatment. The community had traditionally adjudged whether the individual was mentally ill, and it was within the community setting, and essentially within the family for the most part, that the individual was managed (Shorter, 1997:2-3).

Towards the end of the eighteenth century, the concept of community health care changed in the Western World. People were categorized into fragile aged, helpless orphans, felons and lunatics, (the prevailing name for any mental incapacity). For the next one hundred and fifty years in England, Australia and the USA the mentally ill would be legally separated from their families and segregated into asylums, some of which held over three thousand patients, in a system that was for the majority of that time entirely custodial, and latterly, a mixture of both involuntary committal (committal regardless of personal wishes by order of the law) and voluntary admission (with the assent of the patient) (O'Sullivan, 1981:13-23).

In Chapter Two, philosophical views emanating from the Enlightenment period were described, and the significance of Benthamism in influencing political, economic and social spheres was explained. It was also stated that a different, untried concept, that of Natural Law as described by John Finnis, could provide another means of answering the needs of social justice and the common good. Natural Law will be referred to considerably in Chapter Five, but within this chapter, the effect of Benthamism on the outcomes of the Industrial Revolution, and its significance on the foundation of asylumdom for the mentally ill will be considered closely.

So alien was the practice of asylumdom to the previous community-oriented management of the mentally ill, that this chapter, in relation to the aim of the thesis, will address the conundrum of how the concept of asylumdom came to be developed, using a Classical

Utilitarian perspective as described in Chapter Two. Reaffirming the belief, that social justice as a philosophical manifestation of justice and fairness is an essential ingredient in the theory and practice of mental health, it will be shown that Classical Utilitarianism, as espoused by Jeremy Bentham, has exercised considerable influence over the development of mental health care during the past two hundred years (Scull,1993:86). The use of Classical Utilitarianism which prevailed throughout the time span of asylumdom, will be related within Chapter Three to demonstrate the failure of asylumdom to provide adequately for the needs of this vulnerable section of the community. It will be shown that the cataclysmic changes which had occurred and were still occurring in Europe and England itself: religious, political, socio-economic, and scientific changes, provided the environment within which arguments in favour of asylumdom could and did prevail.

The concept of institutionalization that had been implemented in England was exported to the newly founded British possessions in Australia and accepted, unquestioningly, even by the free settlers (Gowlland, 1981). It became the established practice, also, in the newly established United States of America (Goffman,1961). Within Part A of this chapter, only the concept of asylumdom and practices within the English institution will be discussed in detail, and then related briefly in Part B to the USA and Australian situations. This arrangement has been made because the foundation and practices of asylumdom in USA and Australia followed almost identical patterns, and resulted in similar outcomes. Discussing the original model in detail, would, therefore, seem to be the most economical method to adopt. It is relevant within the context of current mental health policy and care, to study carefully the history of asylumdom, and to be aware of justice or injustice meted out to this most vulnerable group of society, in order to prevent repetition in our own time of previous wrongs done to the mentally ill.

Currently, the paradigm of institutionalization for the mentally ill has been partly abandoned for that of community based care with a startling rapidity and, in some cases, an apparently careless concern for the consequences to both patient and society alike. The practices of sequestration will be examined against the prevailing philosophical, historical and sociological background, in order to understand what is being abandoned and why. It will be shown when Chapter Five is reached, that, given the Enlightenment philosophical

view which underpinned arguments for asylumdom, the latter was at odds with any reasonable standard of social justice, and that the alternative, Natural Law already described in Chapter Two, could perhaps, in future, provide a different foundation together with more positive outcomes for the implementation of social justice.

The very establishment of asylumdom raises questions. One has to ask how did this sequestration come to be seen as the only acceptable recourse to treating mental illness? What made it so acceptable to and accepting by society, so that it would remain in place for so many years? Did it come to be seen, eventually, as morally and socially unjust to the mentally ill to incarcerate them in such a manner, or was it just uneconomic, eventually, to maintain institutionalization? Was there, perhaps, an element of denial of the existence of mental illness itself as an entity, in the haste to empty the asylums and return the mentally ill to the community? These questions must be asked in order to learn sufficient from the past so as to prevent repetition of previous errors in the future. They must be asked and answered in relation to the development of mental health care, within the relevant framework of Classical Utilitarianism theory and the application of social justice concepts which were raised in Chapter Two. Such questions are of contemporary relevance, for as Paul Rock has stated:

“Modes of social control exerted in the past become part of the moral and definitional context (of the present)...Each new generation does not rewrite the social contract.” (Rock, 1973:156,159)

Satisfactory answers then are required to the questions that are considered within this chapter:

- 1.What is asylumdom and how did it come into being?
- 2.What is the concept of asylumdom and how was it implemented in England?
- 3 How was institutionalization practised? That is, what happened within the asylum in each of the three countries under review?
- 4.What were the outcomes of asylumdom?

The chapter will be developed accordingly:

CHAPTER THREE A

1 Introduction.

2. Definition of Asylumdom; historical factors which influenced its establishment.

3. The Rationale for Institutionalization: more immediate factors which led to the foundation of Asylumdom: the Psychiatric Factor

CHAPTER THREE B

4. The Implementation of Asylumdom: what happened within the asylum in UK, USA, and Australia.

5. Psychiatric Practices and the outcomes of Asylumdom in each of these countries.

6. Conclusion.

CHAPTER THREE A

2. A definition of asylumdom; historical factors which influenced its establishment.

‘Asylum’ by definition, is a place offering protection and safety (Universal Dictionary, UK.1988:105). By inference, an asylum was to be a place of safety, in which the mentally ill were to be secure against harm and removal by those who prey on them. (1)

Historical factors which influenced mental illness care.

The establishment of asylumdom cannot be discussed in a vacuum. Earlier attempts to cope with mental illness need to be studied in order to understand how the concept of asylumdom came to be considered. It is only since the Second World War, however, that historians themselves such as Mellett: The Prerogative of Asylumdom (1982), have addressed the topic of mental illness dispassionately. Probing under the rhetoric of psychiatric literature can be difficult. Mellett has complained that before the Second World War, writings concerning madness were confined to a medical/psychiatric content, and involved the justification of principles and practices in psychiatry by psychiatrists themselves. The literature was frequently a litany of historical and sociological issues surrounding lunacy care: a history described in terms of inevitable progress and Enlightenment optimism...always ever upwards and onwards (Mellett, 1982:4). An example of such a historical offering may be cited in Kathleen Jones’s work: Lunacy, Law and Conscience: 1744-1845 (1955), a work that Scull, parodying Orwell, has affirmed as providing an extraordinarily useful ideological weapon, giving an account re-writing the past, and supportive of the present powers that be (Scull, 1993:3).

The most informative and authentic literary offering is that by Roy Porter, former Director of the Wellcome Institute of Historical Medical Research, London: The Greatest Benefit to Mankind (1997). Embracing universal aspects of historical medicine, Porter has carefully researched ancient records covering all specialties of the discipline, including the vague and poorly documented pre-asylumdom era in England. He has alleged that mental illness appears to have remained family-based throughout the Middle Ages in Europe, but has stated that there are records that have come down from Islam of identifiable mental illness being treated in a separate hospital from general illness in Granada, 1365 AD. (Porter, 1997:105). Porter has found no other records of active therapy for this type of illness, which does not seem to have impinged otherwise on European practice, and certainly was not reported as reaching England. Medical knowledge remained static for several centuries and was related to the humoral theories of Galen, (Porter, 1997:105) as described in Chapter One of the thesis (page 3).

Within the historical context of this chapter, considerable reference is made to the work of Andrew Scull, the sociologist, because of his association and collaboration with Roy Porter in person during a sabbatical spent in UK, researching primary references to asylumdom in the form of legal documents, asylum and family records. Because of his meticulous scholarship and also because much of his research is reported directly in his writings, Scull's latest book, The Most Solitary of Afflictions (1993), has been of value in reviewing this period of asylumdom.

Other historians who have attempted to grapple in recent years with the history of unreason have included William Parry-Jones who has written extensively of The Trade in Lunacy (1972), concerning the private mad-house system which existed in England during the eighteenth and nineteenth centuries, and Hunter and MacAlpine, whose revisionist writings re-interpreted George III's madness as the disease 'porphyria' George III and the Mad Business. (1969). No kind of asylums are recorded as having existed in England during mediaeval times. (2)

It is difficult to know from this distance in time, just how prevalent mental illness was in the Middle Ages and the Renaissance, because as far as may be surmised, there were no classifications between various types of mental illness, and the categorization of illness

into specifications had not yet occurred. There were, therefore, likely to be wider boundaries of normality set in mediaeval times, and, within the mostly village rural setting in England, strange behaviour might be more easily accepted and contained. Because the concept of illness was viewed within Galen's theory of 'humors' as described in Chapter One, moodiness, depression and mania were seen as manifestations of 'black bile'; the more severe psychiatric conditions which showed unreasonable and abnormal behaviour (for example, what is now classified as schizophrenia), might have been considered 'possession by the devil' during a time when ignorance might cause medical conditions to be assumed to have a theological origin (De Rosa, 1988: 252-256). Statistics in relation to a National Census were not collected until 1801 in England (Scull, 1993: 28n81).(3) Moreover, there was no differentiation between lunatics, vagabonds and paupers.

Foucault's analysis of the history of mental illness is extraordinary. In Madness and Civilisation, (1965) which was introduced in Chapter Two, Foucault evokes a romantic picture of 'Merrie England' in which there is no social restraint; the mentally ill roam happily at will (1965:259, 278). He describes a Renaissance myth of 'The Ship of Fools', claiming it to have been a genuine occurrence, with the mentally ill being shipped up and down the River Rhine in search of their reason (1965:4). Neither of these statements bear scrutiny. Erik Midelfort, Andrew Scull and Roy Porter have all pointed out that the Ship of Fools, (like Foucault's striking image of the mediaeval leprosarium waiting across three centuries soliciting a new incarnation of disease), is simply a literary conceit; these three writers all agreed that none of these portrayals appears to be rooted in reality (in Scull, 1993:4). Mediaeval records are fragmented, and little data is available to confirm or deny Foucault's statements.

It is important to remember that prior to the Industrial Revolution, England's first industry was agriculture, and it is here that we catch our first glimpse of the incompleteness of stating categorically, as some historians have done, that there are scarce social records prior to the nineteenth century. The impression is given in some historical accounts, that mediaeval England was a country of small population, with an ignorant peasantry, overbearing nobility and clergy, a country that has left no records of its actions. This is not so. (4) The records that were kept were those considered pertinent to the times. Why is

this question of population and its historical veracity so important ? It is because of one of the great factors which disrupted feudal life and helped to destabilize society in England, with results reverberating into the eighteenth century, namely, the Black Death (1348-52). The fragmentation of records all over England and Europe may be related to periodic outbreaks of plague, but they paled into insignificance against the Black Death, which spread from China to England (Belloc, 1928, Vol.III:36-43). The figures provided by scholars of that time demonstrate the density of population before its occurrence and the severity of the disaster. (5)

These facts are important when considering the dire warnings later by the Rev. Malthus, concerning a perceived sudden increase in population during the end of the eighteenth century, (1798:11) including a resulting increase in the poor and destitute. His warnings which seem to deny all claims to compassion and justice certainly concerned the economists of the day, such as Ricardo, who believed that the poor laws, by making the poor dependent on charity would teach the poor laziness and imprudence. They would not teach the poor the value of labour (Dean and Bolton, 1980:78-79). The only way to regulate the growth of population, according to Malthus was by:

“The constant of periodical action of vice and misery.” (1798:15)

This statement has been refuted by Buchanan who has argued that if one has a larger population, one has more human beings to undertake labour and produce wealth, as well as providing an enlarged market for the sale of the manufactured commodities (1979: 85). These socio-economic factors will be considered later in this chapter in relation to the political situation and their affect upon mental health care.

One of the consequences of the sparse population existing immediately after the Black Death was to have far reaching effects on the foundation of asylumdom, that of enclosure of much of the common land by the Lord of the Manor, in some cases the Abbeyes, for sheep runs. (6) A new mercantile (7) middle class emerged during the seventeenth and eighteenth centuries who often married into old landed families, and who continued the enclosure process. A new attitude arose which no longer recognized the inter-dependence of master and servant and hence disregarded the common good. With their homes and

common land repossessed by the land owners, the villagers drifted to the cities in search of work and shelter (Asa Briggs, 1965:64-65).

Thus agricultural industry and socio-economics became inextricably bound together, and as technology, exploration and science progressed, conditions became more favourable for changes in practice in all these areas, overshadowed by a similar shift in philosophical theory and politics as well. These changes will be referred to specifically at the appropriate parts of this chapter.

- *Care of the marginalized in the Classical Age.*

After the Reformation, (8) with the Dissolution of the Monasteries which had accepted responsibility for the hospitals that appear to have resembled modern day hospices, whenever mad disorder threatened the community, intervention was made by Local Authorities which derived from the Poor Law Act of 1601 (43 Elizabeth C.20). To cope with these circumstances, successive governments under the Stuart Kings, attempted to encourage local administrators to establish small institutions by means of centralized government, for the reception of lunatics, beggars and vagrants. These were named “Bridewells”, after the old royal palace in London which had become a house of correction in 1555 (Scull, 1993:13). These attempts failed, however, following the English Civil War, the execution of Charles I in 1649, and the subsequent collapse of Absolutism in England (Scull, 1993: 14-15).

The situation in Europe was different; the rule of Absolutism prevailed and, consequently, large armies were required to defend the nation states, which had emerged following the demise of the Roman Empire in AD.410 (Buchanan, 1979: 40). This in turn necessitated the raising of taxes; consequently, every peasant was obliged to work. No-one could be spared to care for infirm relatives. An institutional approach to care for a mixture of beggars, felons and mentally ill was favoured, culminating in the establishment of the Hopitaux Generaux in French regions *cir* 1656 (Shorter, 1997:6). The numbers involved, however, according to historians were small, despite Foucault’s allegations of a ‘great confinement’ and again, there were no separate categories between the different causative factors for the inmates being there (Shorter, 1997:6).

3. The Rationale for Institutionalization: more immediate factors which led to the foundation of asylumdom.

There were significant changes which had been developing and became manifest from the time of the Renaissance (9) and the Reformation onwards: religious, socio-economic, political and philosophical changes which preceded the Industrial Revolution in England and made possible the circumstances in which it was implemented.

-Intellectual and Scientific Changes.

In order for changes to occur, circumstances need to exist which will favour the change (Goudzwaard, 1979:3, Kuhn 1962). During the Middle Ages, the cohesion of Natural Law and Church Authority (in other words, Faith and Reason), bound Christendom together (Goudzwaard, 1979:4). Such a stable environment did not encourage dramatic, social change. Societal structure was vertical both in spiritual and practical representation. (10) There was not so much a demarcation between the different social groups as a recognition of interdependence, each on the other. From the time of the Renaissance onwards, society took advantage of earlier advances in navigation, ship-building, physics and astronomy to encourage overseas trade, mercantilism, exploration and colonization (Buchanan, 1979: 59-70). All these changes following rapidly upon each other, gave support and impetus to one another.

- Changes to the Communication System.

The introduction of industries at the beginning of the nineteenth century, helped to alter the face of England forever. A communication system, able to distribute the industrial products was essential, and led to the construction of roads and canals. The coming of the steam engine accelerated the communication process more rapidly, and broke down the isolation of rural life as it had been led in previous centuries. Sociological changes occurring at the end of the eighteenth century were intertwined with politico-economic change, and were marked in the rural sector. The responsible relationships that had existed between the landowners and their employees were disrupted (Scull, 1993:31). The latter were now seen as labourers who could be paid for by the output of work they produced, and otherwise were not paid at all. The result was a move of the homeless and unemployed country people, together with their mentally ill family members, to the rapidly growing cities of the new industrial centres, where the workers found themselves bound to time in a way that had hitherto been unknown. Whereas the farm labourer's work was regulated by the weather and the seasons, it was now subject to factory discipline, and ruled by the clock (Scull, 1993: 30). Time was important. The mentally ill, often incapable of understanding the

concept or significance of time and unrelenting time schedules, could not become competent members of the workforce. Living in an unaccustomed environment, with a changed regulation of the day, they could not be left to roam the network of unfamiliar city streets. Few families could afford to provide a keeper for this dependant member, and all who could work were obliged to do so. A similar problem would arise with the management of the sick, the feeble aged, the homeless and orphans (Scull, 1993:33). The inability of the family to care for its disabled members was a causative factor in shifting the paradigm of mental health care from family centred and community based to institutionalization.

-Politico-Economic Factors.

The concept of capitalism grew out of the Renaissance and later the Reformation. Liberal Capitalism, the offspring of philosophical liberalism, was a child of the Enlightenment. Max Weber in The Protestant Ethic and the Spirit of Capitalism (1930), has argued that capitalism can be characterized as a societal system in which the accumulation of capital is central (De Fleur *et al*, 1971:181). (11)

The industrialists and members of the mercantile group who supported Enlightenment theory that the individual conscience required no outside guidance, often justified their interpretation of the (Protestant) work ethic in work practices themselves, but unjustly neglected the total needs of their workers, in the pursuit of wealth, (and they believed accordingly, in pursuit of Utilitarian ‘happiness’). Values seen by Finnis, for example, as essential components of Natural Law such as recreation, friendship and aesthetic expression, had no place in the workers’ unremitting work schedule when they toiled often for a mere pittance. Rodger Charles SJ, has criticized the implementation of liberal philosophy itself in the strongest terms especially in relation to social justice:

What the common people had to suffer to achieve this end (of material gain for the majority) was morally unacceptable, and the actual quality of life left a great deal to be desired. ... Nor do the needs of distributive justice seem to have been met...It is not merely an economic philosophy, but a complete philosophy of life. Liberalism...meant simply materialism. (1990:193-4)

All these changes caused great injustice to the poor and the mentally ill; but what was the concept of poverty in England? Its boundaries were defined by the political economist, Adam Smith who wrote:

“Wherever there is great property there is great inequality. For every rich man, there must be at least five hundred poor, and the affluence of the few supposes the indigence of the many.” (new ed. 1976:710) (12)

The effects of unbridled capitalism and liberalism that so inflamed Marx, whose views were introduced in Chapter Two, are exemplified by Reverend T.R. Malthus already referred to in this chapter, who had written an essay: The Principle of Population, in 1789 (in Davies,1980:77). Malthus asserted that the population was growing alarmingly, although data could not verify this statement, since statistics were not as yet being collected. Malthus was concerned about the large numbers drifting to the cities and industrial centres, who, lacking skills and some being also mentally ill, would swell the numbers of the 'idle mob' (Pearson, 175:174-175). In his essay, Malthus stated that the means of subsistence increased only in arithmetic rates, while the population, when unchecked, increased in geometric ratio (in Davies,1980:79). His theory fitted well with Adam Smith's view on the eternal nature of the rich/poor relationship. Malthus supported Smith's viewpoint while Ricardo, an economist, pursued a punitive vein and urged the abolition of:

"...the poor laws and proposed abstention from charitable interference with the state of poverty." (in Davies, 1980:79)

Again, Ricardo urges that charity to the poor encourages habits in them which are intransigent and can only be overcome through obligatory acceptance of work. For Ricardo, the regulation of the labour force by the law of supply and demand eternalizes the condition of poverty. Ricardo asserts that it is self-defeating to divert resources away from the rich to the poor. If the wages of the labouring poor are increased above their necessary means of subsistence, this will create the conditions for an increase in the labouring population. The poor laws by making the poor dependent on charity, teach the poor imprudence and laziness. They do not teach the poor the value of labour (Ricardo, 1962:105-6,15).

The recommendations of Ricardo to ignore the claims of the destitute on charity and with regard to the plight of the poor are refuted, because the rationalized policy, together with the competitive realities of an economic system dominated by industrial manufacturers, combined to produce a market-oriented society in which there was a tendency of the primitive capitalist economy to:

"Oscillate wildly between conditions of boom and slump." (Scull,1993:33)

This sharply reduced the capacity of the poor to cope with the economic reverses. Any wage earner, whether agricultural or factory worker existing on subsistence wages, had no hope of making adequate provisions for periods of inevitable downturn in conditions which

followed the boom periods. Financial provision certainly could not be made for care of a mentally ill family member.

The works of Adam Smith, Malthus and Ricardo, were all published at approximately the same time as Bentham's, (the end of the eighteenth century). Their appearance, together with the establishment of the new industrial cities following on the introduction of the Industrial Revolution and the drift of large numbers of rural unemployed into the cities, all combined to provide a favourable environment for the introduction of Classical Utilitarianism as the prevailing philosophical view to which the politico-economic framework could be hitched. They made possible the implementation of Bentham's belief in the value of central government. Such a bureaucratic organization, according to Giddens, would provide social control and power over the large masses of population gathered in strategic civic places (1991:144-169). These masses would prove much easier to control and to direct than the scattered and diverse groups hitherto spread throughout England, in small numbers within villages (1991:144-169). Furthermore, villagers traditionally had owed allegiance to Lords of the Manor who were themselves the providers of Justice as magistrates, and who made local rules and regulations related to their own bailiwicks (Giddens, 1991:146-147). With a central government, it was possible to maintain control and authority which would be regulated and co-ordinated throughout the country.

With so many changes occurring in quick succession, and sometimes simultaneously, attitudes were changing towards, for example, family responsibility for the mentally ill, changes for which no one circumstance was responsible. The overwhelming speed and proliferation of change in environment, work, family life, expectations and behaviour, produced a severance of tradition in which most social life had been localized (Giddens, 1991:150). This was now lost in new, foreign surroundings. The inability to reproduce the local attachments within new localities amid an alien social group, and experiencing new life styles, all compounded the insecurities which destruction of familiar environment encourages, and must have led to confusion and further instability on the part of the mentally ill. It must also have led to their behaviour being recognized as 'different'.

-Identification of the mentally ill as deviants.

Howard Becker has written of deviance as:

“The deviant is one to whom the label has been successfully applied; deviant behaviour is behaviour people so label.” (1994:360)

The nineteenth century Englishman, however, did not speak of people who were different as ‘deviants’, but as ‘misfits’ (Pearson, 1975:148-9). Living in unfamiliar urban surroundings, and in close proximity to strangers, those community members who were ‘different’ in appearance or behaviour, could more readily be identified by others. It is difficult to decide whether there was a heightened incidence of madness, as history would have one believe at the beginning of the nineteenth century, or whether the dynamics of change produced symptoms of madness. Mad members of one family, whose behaviour had been tolerated within a rural setting, were now part of a different much wider, urban social group, who had no knowledge of the mentally ill person’s traditional kinship or family practices.

In any society, there are codes of acceptable and predictable behaviour within which the group functions. When behaviour is bizarre, it may be interpreted as threatening by those unacquainted with that person, and some behaviour which is merely eccentric may be labelled ‘mad’. (13) While evaluation of behaviours as symptoms of mental illness takes place within a group setting, individuals function in more than one group context. (14)

The fear of ‘idle masses’ becoming an unmanageable mob, in which it was believed the lunatic would figure largely, was a very real concern at the beginning of the nineteenth century.(15) This attitude toward what would now be seen as deviance owed much to the Enlightenment Age philosophers with their unshakeable belief in the ever progressing human condition (Gay, 1967:266). With supreme confidence they believed all errors in the human condition could be rectified (Scull, 1993:110). John Locke as explained earlier in Chapter Two, in particular made an impressive contribution to Enlightenment thought. Locke was a contemporary of Isaac Newton (1642-1727), the mathematician and physicist. Newton had demonstrated how the whole observable universe appeared to behave as a gigantic piece of clockwork, in accordance with mathematical, mechanical principles. This clockwork image came to crystallize for Enlightenment followers, the belief that, because the human being was now in control of his/her conscience and destiny, the world could and should continue to progress satisfactorily on its own, without metaphysical interference (Buchanan, 1979:77,102-105). Locke used Newton’s work on mechanics to construct a

mechanistic theory of the State in which good government is determined by the provision of constitutional checks and balances (Buchanan, 1979:103). **(16)**

Bury has reflected that human development should not be left to the mercy of an external will:

“...otherwise the idea of progress would lapse into the idea of Providence.” (1920:5)

For this reason, philosophers of the Enlightenment believed it necessary to remove the concept of God’s overall control over the human being in order to accomplish the structure of the modern capitalist social order (Goudzwaard, 1978:20). This task was undertaken with the help of the philosophical theory known as deism (Heinman, 1945:49). **(17)** Deism is a philosophical belief in a god established by reason and evidence without acceptance of the definitions ascribed to God by Revelation in the Bible or by the teachings of the Church. Deism allows of belief in a creator of the universe, but who does not respond to human prayer or need. Beginning in the the eighteenth century, ‘deism’ was applied to positions widely apart, such as the positive rationalism of Samuel Clarke and the negative pseudo atheism of Anthony Collins. Voltaire is held as an example of a deist (Gaskin in Honderich, 1995:182). This rational concept theorized that since the world had been created in a perfect manner, then no further modifications or work needed to be undertaken in its management or development. **(18)**

There always had been crime, deviance and madness throughout the ages, but Pearson suggests that, in relation to Foucault’s theory of a ‘rupture of thought’ occurring at the end of the Classical Age, thought itself was precipitated into the Modern Age with the establishment of the Enlightenment (1979:147). Foucault’s theory was discussed in Chapters One and Two. Out of the cataclysmic changes of that time would come a different way in which people thought of these issues; institutions of the police, the penal system, psychiatry, education and welfare would emerge (1979:147). The behaviour of the Benthamites and Reformers over lunacy illustrates just this change in thinking. The unemployable were all to be efficiently catalogued by bureaucracy into categories of physically or mentally ill, orphan children, felons and destitute. All were to be removed from their normal environments, which were believed to contribute to their deviant condition or behaviour, and to be rehabilitated back to the workforce, following an enforced

period of institutionalization (Scull, 1993:133). Such was the unbridled confidence of Enlightenment belief in progress and what passed for science.

Benthamism as an Enlightenment philosophical view of Utilitarianism, has already been discussed in Chapter Two. Utilitarianism, applied to centralized bureaucratic efficiency, provided bureaucracy with mechanisms to uncover as well as to eliminate social evils. (19) Such a centralized government, influenced by Enlightenment theory, was ideally placed to enter into the area of lunacy reform and to 'tidy up' society by classifying groups who appeared different from the majority. Appropriate institutionalized therapy would be proposed which, the Benthamites were convinced, would return the rehabilitated individual to the workforce (Scull, 1993:84-86). In implementing this political strategy, Benthamism was supported by the Evangelical Movement.

-Evangelicalism: an adjunct to Benthamism.

It is reasonable to state that these changes could not have been carried through, without the influence of Evangelicalism which owed its popularity with the underprivileged to the influence of John Wesley. (20) John Wesley (1703-91), had preached to the broad base of the social pyramid on the evils of drunkenness and debauchery. The poor found in his preaching a chord of understanding which was not perceived to be present in the established church. He particularly developed a following in the West country and in the new industrial cities of northern England. Wesley preached of the commonality of the human race (Scull, 1993: 85-86). Those workers struggling to do their best despite all odds need not despair; they would surely receive their reward in the next world. They need not envy the unscrupulous mill owner, for he too would receive his just deserts in the hereafter. Wesley was seen by society, as keeping the workforce controlled and accepting of their lot (Asa Briggs, 1959:6). At the same time, the historian, Macaulay, founded the Clapham Sect, members of whom were part of the Reform Movement, and carried Evangelicalism to rich and poor alike.(21)

The great difference between the Benthamites and the Evangelicals was that the latter had no wish to abolish the distinction between the rich and poor, but wished to

"Justify both by introducing into the world a new leaven of righteousness." (Scull,1993: 84n35) (22)

To Bentham, the dilettante behaviour of the Evangelicals was amateurish and disorganized, depending on intuitive feeling and self-righteousness. The Benthamites, on the other hand were committed to changing the structure of government. (23) One of the Evangelical Reformers' favourite causes soon became that of lunacy reform. (24) Those reformers who were Justices of the Peace and members of the Reform Movement (25) were the prime instruments of local government at that time, and as part of their responsibilities included inspecting gaols and workhouses, they were conversant with the most troublesome, and possibly, the most ill-treated of the pauper population-the lunatic paupers (Scull, 1993: 84n35). It had become common, when pauper lunatics became too troublesome for them to be tolerated at home, to place them in the only receptacle available: prison or the workhouse, where again, because of their specific behaviour, they could cause disorder; however, as has been stated, there would occur, at the beginning of the nineteenth century, a change in attitude in the way people who were perceived as 'different' would be treated.

-Parliamentary Investigation of treatment of the mentally ill.

In 1807, Sir George Onesiphorus Paul, a Benthamite magistrate who was involved with prison reform, having become frustrated with the anomalies he saw existing between laws dealing with lunacy, successfully secured the appointment of *A Select Committee of the House of Commons charged with investigating the State of the Criminal and Pauper Lunatics in England and Wales*. (House of Commons Report, 1807). With no clear cut evidence of the efficacy of institutionalization, but a belief in the removal of the deviant from his/her environment, and with no clear views as to how such establishments should be conducted, the Committee recommended:

"The Erection of Asylums for their (paupers') reception in different parts of the country. (*Report of the Select Committee on Criminal and Pauper Lunatics*", 1807:6).

Twelve county asylums were built under 'Wynn's Act' which empowered but did not compel Justices of the Peace to provide these establishments (Ayres, 1971:38). The concern was with security together with economy in implementation. The result was a reproduction of prison-like buildings, using mechanical restraints for the most part, because of the scarcity of minders (Ayres, 1971:38).

Not only the poor became the centre of interest to the Reformers. Changes had occurred in wealthier sections of the community toward care of the mentally ill. With the rise of the mercantile and industrial groups, together with the changes in attitudes toward previously

accepted family responsibilities, many affluent families are reputed to have sent mentally ill family members to private houses, which were conducted by physicians or often clergymen. These houses became known, legitimately as 'madhouses', and the doctors who supervised their care 'mad doctors' or 'alienists' (Parry Jones, 1973), because they did not practise in any other medical field. To substantiate further their beliefs that lunacy care was in need of reform, the reformers investigated various private madhouses and institutions in which they believed abuse of the mad was being sustained. A number of these private houses had become charitable institutions such as St. Luke's Hospital, London, established in 1751. Small private houses which accepted both wealthy patients and also some who were paid for by the local rates, were reported to have been established in York, Liverpool, Leicester and Exeter (Scull,1993:18).

Besides these nominally charitable institutions, however, the completely profit-oriented houses formed a 'trade in lunacy' which was lucrative and was viewed with suspicion by the community. That there may well have been harsh treatment within them is not disputed. The early nineteenth century was a time when physical abuse was not unusual, when hangings were a subject of public amusement, as was visiting the mentally ill in Bethlem on Sunday afternoons- a pastime which is reported as providing endless laughter (Scull, 1993: 91). **(26)**

These private houses were not liable to inspection, nor were they registered to any responsible official organization. Because of the silence surrounding their management, they gave rise to the belief that they were being conducted by unscrupulous owners, and the inmates were victims of deprivation and cruelty (Mellett, 1982:160). This was the story that has been perpetuated through the years by defenders of asylumdom, such as Kathleen Jones (Lunacy, Law and Conscience, London:1955), but as Parry Jones, an authority on private madhouses of the late eighteenth century has indicated, while there was possibly considerable truth in their complaints, not all houses were conducted unscrupulously, not all care was inhumane (Parry Jones, 1973). There would always be some madhouse keepers, who, whether following the common good of Natural Law or their individual consciences within the Enlightenment Kantian philosophical view, would believe it correct to treat their fellow human beings as themselves. Further, through meticulous scholarship,

Mellet and Parry Jones in criticizing Kathleen Jones's interpretation of history, have demonstrated that to accept the traditional view without careful analysis, leads to inaccurate and over-simplistic conclusions (Mellett, 1982:160). While there are examples of harsh treatment and violation of human rights, it was also possible to demonstrate:

"The social importance of a private institution and a positive clinical and therapeutic contribution made by the owners." (Mellett, 1982:160)

This statement owed much to the development of moral therapy.

- Moral Therapy a factor in the treatment of the mentally ill.

Following the French Revolution, with its prevailing ideology of liberty, equality and fraternity, madness was perceived by the doctors as making a person 'different'. The mad person was believed to have forfeited liberty, and membership of 'normal' society. The justification was mounted by a French physician Pinel, and by Tuke, a Quaker philanthropist from York (27) working quite independently from his French co-thinker, as well as others who urged the separation of the madman from society (Esquirol, in Mellett, 1982: 160). Esquirol, a humanitarian and a pupil of Pinel, had stated that this was not only to forfeit freedom but also:

"To break the habits of the lunatic by taking him away from home...and surrounding him with strangers, and changing his way of life." (Esquirol, in Mellett, 1982:160)

These rehabilitative strategies laid the foundation for moral therapy. Moral therapy when implemented cannot be described as a specific technique; rather it was a pragmatic approach which recognized the lunatic's sensitivity to many of the inducements and emotions of others. There was to be an insistence on minimizing external, physical coercion:

"Neither chains nor corporal punishment are tolerated, on any pretext, in this establishment." (Tuke, in Scull, 1993:99) (28)

It is unlikely that Tuke's proposed moral treatment was automatically received and universally understood throughout the country as Shorter would have one believe (Shorter, 1997:8). No change is ever uniform in acceptance, and there is no reason to believe that Tuke's ideas were instantly acclaimed. There is recorded evidence of continuing advocates of coercion and brutality. There were also those who were exploiting the mad, and while denying common humanity to them, were profiting by their patients' misfortunes (Scull, 1993:190). Because of these practices, Tuke was adamant that he would not employ doctors to treat his clients. Nor would he formulate his methods into a model, maintaining that moral therapy was nothing more than the application of commonsense and Quaker

principles (Scull, 1993:188). Ironically, it was the introduction of moral therapy, with its emphasis on removal of the mad from their family environment which influenced the Reformers to establish asylumdom.

The Reformers, looking for other practical justifications for removing the mentally ill from society, recounted their horror at discovering the conditions in which the latter existed in the new, sprawling, city slums. There was no attempt by politicians or physicians to undertake a systematic study of lunacy in the community. Goffman believed that a few exemplary tales were chosen as anecdotal evidence to dramatize their findings (in Scull, 1993:144). (29) In portraying the horrors of what they discovered during private investigations, the Reformers assured Parliament that conditions were not any better in private institutions. Mental illness, they believed, was in need of further investigation. Pressure was brought to bear by Members of Parliament for a Parliamentary investigation of conditions in private madhouses and charity asylums. The result was the authorization of a Select Committee. (*House of Commons Report of the Select Committee on Madhouses 1815-1816*). Abel-Smith in A History of the Nursing Profession (1970) has written:

“It is not unusual for reformers to overstate the evils they are hoping to correct.” (1970:5)

The same possibly applied to the Reformers of 1815. By the time the final report had been submitted, there was a wealth of documentation available stating that treatment received by the mentally ill in all types of situations, both asylum and at home, was inhuman and intolerable (Scull, 1993: 121).

Despite the strenuous propaganda produced by the Reformers, there was a gap of thirty years before their lunacy reform objectives could be achieved. The Reformers placed Bills before Parliament on three occasions for the provision of these reforms, and on each occasion, they were unable to secure clear majorities in the House of Commons. At each instance, the measure was rejected by the House of Lords (Scull, 1997:122). The failure may be attributed to the tactical incompetencies of the Reformers, who had included reference to rigorous inspection of ‘single lunatic’s conditions’. This provision worried members of the House of Lords, who wished to protect their families’ privacy concerning insane relatives. Further, there was opposition from those with vested interest in maintaining the *status quo*. The ‘alienists’ saw a lucrative source of income disappearing, while rural aristocracy who, since the French Revolution had become suspicious of central

government, saw a strong Utilitarian centralized government removing much of their local power as magistrates and Justices of the Peace (Scull, 1993:123-124). In addition, plans to make county asylums compulsory, (30) threatened local authorities with heavy capital expenditures, at the same time that pressure was being brought to bear for the same groups to construct new gaols, workhouses and communication systems for the new industrial society (Scull, 1993:125).

Tenants tended to follow the feudal system of believing what the Squire said, and supported the conservative approach. Because industrialists, merchants and bankers related more readily to national and international conditions and markets, gradually the significance of local ties were weakened (Goudzwaard (1979:62). In addition, the success of the new economic enterprises required stability and order. The promise of such a state under the Benthamites ensured their eventual success. It was only after the wealthy and influential middle classes had increased their political power through the 1832 reform of Parliament, with the ascendancy of the Whigs, that the centralized administration and control were successful. (31) The victory of Benthamism was essentially a politico-economic victory, not humanitarian. The result was the *Lunacy Act of 1845. (8,9, Victoria c 126.)* (32) The pattern of procedure was similarly introduced to USA, and would be followed precisely in Australia. In all their reports and proposals for institutionalization of the mentally ill, the Reformers were assisted by another major factor besides the development of moral therapy: the emergence of psychiatry as a branch of the discipline of medicine.

-The Psychiatric Factor.

Doctors, historically, have descended from the 'medicine man' or the 'witch doctor', both of whom have been held in positions of awe within their own cultures. Since the Middle Ages, by virtue of the medical guilds and establishment of medical schools within the mediaeval universities, administrative criteria had been formulated which established the doctors' occupational identity. (33)

Because of the humoral theory, there was also the belief that the mind and body were independent. The brain was part of the physical body, the mind contained the soul. (34) It was easy, therefore, for the community to accept that doctors were competent to treat lunacy as well as physical illness. The doctor not only believed himself to be, but was seen to be, the person to treat *all* diseases, mental and physical, and to effect cures. This is how

special hospitals such as St. Luke's, London, came to be established, where lunacy was accepted as a medical prerogative (Shorter, 1997:9-10).

In eighteenth century England, there had been three types of medical practitioner: fully qualified physicians, surgeons who had served an apprenticeship, and apothecaries who were not university men. (35) The term 'psychiatry' with which some medical practitioners would become associated, originated in the German States, because within each of their twenty universities, centres for scientific research were established, specifically aiming at finding cures for mental illness, which was believed to be centred in the brain (Shorter,1997:35-36). (36) Among the alienists or 'mad doctors', (pp.128-129 of the thesis), the growing agitation of the lunacy reformers and the persistence of the German doctors caused increasing concern.

Using Cartesian dualism, alienists/psychiatrists justified their claims for power and control over the mentally ill. Rene Descartes, (1596-1650), one of the most outstanding French philosophers of the seventeenth century, had among his many works, argued for a distinction between mind and body (Cargile in Honderich, 1995: 189-191). (37) The alienists two centuries later, argued that the mind, identified with the soul was, therefore, immortal (Browne,1837:4 in Scull, 1993:225 n90). Entering the debate on the causative factors of lunacy, they adopted a somatic viewpoint which they considered satisfactory. Browne was able to allege:

"From the admission of this principle, derangement is no longer considered a disease of the understanding, but of the centre of the nervous system, upon the unimpaired condition of which the exercise of the understanding depends. The brain is at fault and not the mind." (1837:4)

Using this argument, and now happily styling themselves as psychiatrists, doctors came to two explanations as to why they were unable to demonstrate physical lesions of the brain. Either it was because the facilities and instruments available for dissection were inadequate, or else that in the early stages of lunacy, functional brain changes could not be observed; they were only made manifest in the chronic stage when they became structural (Scull, 1993:224). The strategy the alienists worked out to maintain control over the mentally ill was simple. They merely changed sides and from being antagonists of asylumdom, now citing Pinel, Esquirol and Cullen, (a well known physician), set out to impress influential laymen by bombarding them with arguments in favour of asylumdom, and of their own expertise in dealing with the mentally ill. (38) Above all, the alienists emphasised to the

community, that only under their care, in the congenial environment of isolation, could and would the mentally ill be cured (Scull, 1993:224). (39)

Moral therapy itself proved no obstacle to their claims; they merely incorporated it as one of many methods of treatment! (Scull, 1993:224). So it was that psychiatry was born, and psychiatrists manoeuvred themselves into positions of readiness to monopolise authority within the proposed asylums. The psychiatrist had successfully negotiated the transfer in the eyes of the community from the periphery of professional medicine as an alienist to the professional reality of a psychiatrist, part of the medical profession itself. By moving in reality from specialization in mental illness to readiness to dominate in anticipated mental illness therapy (as asylumdom was viewed), this made psychiatry a medical monopoly (Scull, 1993:232).

To further consolidate their position, the asylum doctors asserted that all proposed asylum administration and even housekeeping management was related, even indirectly, to therapy (Parry Jones, 1973:82). By insisting that all requirements and needs would require their seal of approval, the doctors hoped to be able to control the staff, and to exercise authority over even minute management of the asylum (Scull, 1993:209). They were vociferous in their assurances that, should lay persons be allowed to exercise power, there was a likelihood of corruption, ill-use of the patients and mismanagement. This assertion, the Reformers seem to have accepted, acting under the spell of the psychiatrists' avowed 'expertise'. The Reformers seem to have closed their minds to the reality of the situation, to the prolific documentation collected on the administration of private 'madhouses' during the 1807 and 1832 investigations. The Reformers also seemed to be oblivious to the paucity of scientific knowledge involved in mental health care theory (Ellis in Scull, 1993:197-198 and fn77).

Freidson has argued that for the profession of medicine as a whole:

"A significant monopoly could not occur until a secure and practical technology of work developed."
(Freidson, 1970 a :119-121)

In other words, doctors had to attract clients because of the obvious quality of their work. Paradoxically, psychiatrists were to become an exception to this statement. If they could once gain control of the proposed asylums, they would not have to attract patients. The patients would come to them. The patients would all be involuntary admissions under the terms of the Lunacy Act 1845, that is, they would all be certified as insane by the Law, and

confined indefinitely. They would, therefore, form a captive clientele, and this would give the doctors immense power (Scull, 1993:245).

Whether the psychiatrists' proposed dominance gave them the right to consider themselves part of the medical profession, however, is another matter. In essence, the nature of medical professionalism consists of an equal partnership between the health professional (in this case the psychiatrist) and the patient (Freidson, 1970 a:21-22). The professional offers expertise consisting of knowledge, skills and understanding of physical and mental illnesses, while the patient seeks treatment of a particular health condition. The condition is under scrutiny and is the focus of both doctor and patient, thus providing objectivity and parity of interest (Scull, 1993: 382). In treating major psychosis, when the patient may become detached from reality and be oblivious to his/her surroundings, the equation becomes unbalanced. The patient is unable to focus on a coherent description of the mental condition, so the psychiatrist occupies a position of control and power over the patient in interpreting the presenting signs and symptoms (Scull, 1993:382). In such a situation, this fact bears out Friedson's belief that the doctor-patient relationship fosters a child-like faith that the doctor is guided by esoteric training and knowledge which the patient trusts implicitly (Friedson,1970 a: 119-121). Scull has observed, that in this regards:

"Modern medicine, much of the time has results...on its side. (Nineteenth century) British psychiatry (and most of the 'experts' currently engaged in the control of deviance) clearly did not. "(Scull, 1993:382)

In arguing and demonstrating their belief in their suitability as lunacy experts, psychiatrists could indeed share their discourse with politicians: they were all perceived by the community to be articulate and sane. Coming from the upper and middle classes, they could all enter into discourse with each other. The politicians moreover, wanted to believe in the arguments mounted by the psychiatrists. The latter provided plausible reasons as to why they should treat mental illness; they assured politicians of their ability to care and cure insanity, and pointing to Tuke and Esquirol, they could provide substantial evidence of the belief that removal to a different rehabilitative environment would not only cure the malady, but also produce a change of habit in the patient who would henceforward be ready to enter the workforce (Scull, 1993:110).

Psychiatry fitted perfectly together with the reforming, evangelical, utilitarian point of view. The paupers who would become the clients, however, did not share their communicative skills, nor were they able to participate in the discourse, because, as has already been stated,

many of them were detached from reality and were oblivious to their surroundings. Foucault and other anti-psychiatrists would argue later that the ‘alienists’, by utilizing language incomprehensible to the layman, were opportunists, seeking to establish:

“A self-serving hegemony over madness to boost their own wealth and power.” (Shorter, 1997:17) (40)

Each profession, however, utilizes its own vocabulary. (41) Language is valid in reflecting society (Freidson, 1970 b:21). The alienists were developing their own language for socially defining perceived types of mental illness. This has nothing to do with the definition of mental illness *per se*, but of how, once a manifestation of insanity is defined as an illness, people’s responses to it are channelled into that socially constructed meaning (Scull, 1993:200). Freidson has argued, that a particular social meaning is arrived at when:

“We...choose to focus not on whether certain persons are mentally sick or not, but on how their life is reorganized because they are called ‘mentally sick.’” (Freidson, 1970, b:21-22)

What the alienists were establishing, then, as they used their jargon to confirm their professional identity, was the authority to label one patient as being mentally ill, and to deny that identification to another.(42) At the same time, by beginning to identify themselves, the psychiatrists, as specialists in mental illness, the label they attached became the one most accepted by laymen. Therefore:

“The social acceptance (or rejection) of someone as crazy, often depended on the patient’s new status being professionally legitimized...The psychiatrist could transfer his judgment into social reality.” (Freidson , 1970, b:21-22)

This was a new approach to medicine and to deviance in the early nineteenth century. There is no reason to believe the doctors were anything but sincere and altruistic in their determination to treat illness, and to treat their patients fairly and justly, but they were, in terms of later scientific medicine, erroneous in their judgments of competency to treat lunacy. All the strategies were now in place; the door was wide open for the establishment of asylumdom nationwide. By the 1830s, nearly all the newly founded asylums in England would have a medical superintendent. The Madhouse Act of 1828, and the Lunacy Act of 1845, virtually gave the psychiatrists exclusive rights to treat the insane, so that the medical profession had only to maintain its monopoly rather than struggle continually for it. The asylums were now the only legitimate institutions for reception of the mentally ill, so that the community were obliged to refer their insane relatives to the asylum doctors, and thus, indirectly, to support the latter’s professional authority (Scull, 1993: 231). Thus, the

psychiatrist could show the authorities that, despite the dearth of demonstrable cures, he was providing a useful service to the community, and was exercising social control over mental illness itself.

CHAPTER THREE B.

4. The Reality of Asylumdom: what happened within the Asylum in UK, USA, and Australia.

The Theory of Asylumdom.

The concept of asylumdom theorized that in removing the insane from their harmful environments, within the appropriate environment of the asylum, they could be re-educated into acceptable behaviour, self-control and the 'work ethic'. The insane would be cured and rehabilitated back to society, and especially, to the workforce (Mellett, 1982:4).

There was an insistence in the Enlightenment philosophical view, on the possibility of radical transformation of nature, including human nature. Early manufacturers, some of them followers of Evangelicalism, such as the industrialist, Josiah Wedgwood, believed that in the process of manufacturing, nature would become:

"Simply relegated to a source of raw materials, to be worked on and transfigured through active human intervention." (Wedgwood in Scull, 1997:106)

In such an industrial atmosphere, workers would be taught self-discipline, a recalcitrant population reduced to law and order and re-educated in a different way of living (Wedgwood in Scull, 106 fn 203). The emerging attitude towards the insane paralleled these contemporaneous shifts. The implication proclaimed by Enlightenment views was that one might organize the empirical world in such a way that:

"Man develops an experience of and assures a habit of that which is truly human." (Helvetius in Scull, 1993: 107 n 208)

The Reformers and doctors alike, imbued with Enlightenment views that improvement was always possible, aimed at curing the mentally ill. The same views that demonstrated a faith in the capacity for human improvement through social and environmental manipulation, translated this into a variety of settings, not only factories, but also schools, hospitals and asylums. It was believed that in removing the mentally ill from the undesirable

environment, the concept of sequestration, combined with 'moral therapy' would rehabilitate the mental 'misfit'. The asylum would become, like the factory:

"A laboratory for social improvement...an environment in which social organisation and change are reflexively engineered, both as a backdrop to individual life and medium for the reconstruction of individual identity." (Wedgwood in McKendrick, 1961:46)

Asylumdom it was believed, would produce the twin results of cure and rehabilitation using Tuke's proven methodology of 'moral therapy'. (43) Moral therapy, however required personal involvement, with persistent re-inforcement of the desired behaviour using patience and forbearance. It could only be used in a situation where there was a reasonable ratio of psychiatrists and informed carers to patients. This both Reformers and psychiatrists believed to be feasible. (44)

The Asylum in reality.

-In England.

The centralized power of utilitarian government together with evangelical zeal had effected the passage of the Lunacy Acts which would control the admission and discharge of the mentally ill from the asylum. Social control of the inmates through these Acts, had been imparted within the asylum to the psychiatrists, who, much as they may have desired to develop the new model of moral therapy care and humanitarianism, found themselves unable to do so because of the unexpectedly overwhelming numbers of inmates with chronic conditions which made cure an improbable aim. There are also records of a much smaller percentage of patients whose stay was perhaps a few months (Mackenzie in Scull, 1993:271, n14). (45) See Table 3.1 (page 139). By 1845, asylums in England were being built to house over 1,000 inmates. In accord with the terms of the Lunacy Act, they were constructed in each County, and because of the relative cheapness of rural land, were constructed for the most part in what were then remote areas of the countryside.

The increase in numbers of asylum inmates does not imply that all families were anxious to rid themselves of mentally ill members. Rather it relates to the fact that the expenses incurred in caring for ill relatives were so large as to reduce families to the state of paupers, with the inevitable removal of the mentally ill because the relatives could no longer afford to provide home care. (46) At the same time, ever mindful of cost to the local government, Authorities were at pains to economize. (47)

Magistrates never of a generous nature, sought to apply stringent measures which ensured (whether intentionally or not), the degradation of the pauper asylum patient. Moral therapy required a small ratio of patients to both psychiatrist and to sympathetic assistants who had been instructed in the aims, objectives and practice of moral therapy. The latter included reinforcing acceptable behaviour, such as keeping regular hours for meal time, hygienic practices and cleanliness. The importance of work was encouraged for those who were able, so that asylums would grow their own produce, provide for most of their dairy needs, and often undertake practical work for the community, such as laundry and sewing (Carpenter in Davies, 1980:130).

There were those who indeed tried to implement these ideas. John Connolly, superintendent of Hanwell was known for his humanitarian attitude toward his patients, (in Scull, 1993:100n182), but for the most part, moral therapy seems to have been overtaken by the unexpected numbers of patients who swamped the asylums. The lack of capable assistants to cope with the large numbers led to the mismanagement of the inmates, and, as the numbers increased dramatically, so did the stories of incompetence, neglect and cruelty (Davies, 1980:123-14).

Regularity collapsed into regimentation, responsibility for personal tidiness into enforced uniformity with impersonal rules. Relics of Asylum Rules which have been preserved, tell of men and women (referred to consistently only as males and females) being strictly segregated at all times, not only in daily living and at work, but also for meals and chapel attendance (Davies, 1980:128). Even Tuke's 'Retreat' at York, is reported by Digby as seeing patients as:

"No longer subjects to be treated but objects to be managed." (Digby, 1985:56 in Scull 1993:298)

The psychiatrist found that the belief that all cures were possible, proved to be mistaken with the diseases they encountered, (48) and so the numbers of inmates proliferated. The anticipated cures were not forthcoming, and care became palliative rather than curative.

NUMBERS OF CURABLE PATIENTS

TABLE 3.1

IN ENGLAND and WALES. 1844

Asylum Superintendents' Estimates of the Number and Percentage of Curable Patients in Asylums in England and Wales in 1844.

Type of Asylum	Private			Pauper		
	Total Patients	Number Curable	Per cent Curable	Total Patients	Number Curable	Per cent Curable
Provincial						
Licensed Houses	1,426	412	28.9	1,920	637	33.2
Metropolitan						
Licensed Houses	973	153	15.7	854	111	13.0
County Asylums	245	61	24.9	4,244	651	15.3
Charity Hospitals	536	127	23.7	343	59	17.2
Military/Naval	168	18	10.7	-	-	-
Bethlem	265	181	68.3	90		no estimate
St. Luke's	177	93	52.5	31	16	51.6

Source: Metropolitan Commissioners in Lunacy, 1844 Report, pp. 185, 187

The bureaucrats and politicians who had established asylumdom, and the magistrates who had implemented asylumdom, offered no guidelines for the management of such institutions. They were unable to advise on the management of the mentally ill, and had no clear vision of what was implied by ‘moral therapy’ nor how to advise on its implementation.

Within the asylum, because of its emotional and geographical isolation from the community, a sub-culture existed (Edwards, unpublished PhD thesis, 1978: 48). The harmless and the harmful co-existed, presided over by doctors and attendants with only the concepts of safety, protection and hygiene offered to their patients. There was little to attract ambitious doctors who might wish to practise professional medicine; nor do the records show that the Nightingale nurses were likely to be induced to undertake a role that was mostly attendant and partly janitor. Tuke had laid great store in the employment of suitable attendants to undertake moral therapy. More and more, the asylum doctors came to rely on:

“A staff of attendants, themselves recruited from the dregs of society, men and women who, in return for the long hours spent in close, defiling contact with the insane, received suitably low status and financial awards.” (Scully, 1993:263)

Reforming enthusiasm soon outran planning and infrastructure. Beyond the emotional desire to help the mentally ill, and to provide care, safety and kindness, the dilettante reformers had no concept of the everyday unrelenting grind of poverty from which the inmates came, and to which they would return, should they ever be released. Faced with the daunting task of establishing asylums, the magistrates had called upon the very people who had been condemned by the reformers, namely the ‘alienists’ as the only people with any experience of the practicalities of mental illness. Many alienists became asylum superintendents. The perennial shortage of money, together with incompetence, led to the building of prison like edifices to accommodate the numbers of inmates who had been incarcerated according to the unscientific diagnoses of that time. Table 3.2 (p.143) shows the variety of conditions which psychiatrists claimed to be the cause of mental illness. The same wide variety of conditions would be found in asylumdom which had been exported to Australia and established also in the United States of America.

-Significant events leading to the introduction of Asylumdom in the newly formed USA.

The improvements of shipbuilding, navigation and communication systems from the seventeenth century onwards, all were conducive to emigration and colonization, while within Great Britain itself changes occurred with the coming of mercantilism. (see fn7)

Between 1630 and 1642 there occurred the “Great Migration” of the Puritans from England to America. (49) (Freely adapted from Winsor in Encyclopaedia Britannica, Volume 22, 1965:858, A-D). Later, during the eighteenth century, the American Revolution (1776), would significantly affect France, culminating in the French Revolution (1789). (50) There is a significant difference, however, between the two philosophical views influencing these changes. May has described the American Declaration of Independence as an attempt to synthesize Christian Puritanism, Deism, (described in fn 17) and the idea of progress (May, 1976). Goudzwaard has stated that deism is present in the express reference to natural rights which are bestowed on mankind by a providential God (Goudzwaard, 1978:54). It was these beliefs incorporated in the Declaration which would be brought to bear upon the introduction of asylumdom to the United States of America.

-The theory of Asylumdom in USA.

In the USA, the old colonial methods, similar to those of rural England, had maintained the deviant in a family situation. During the Jacksonian era, however, the asylum was established, not as a bureaucratic answer to lunacy, but as a philanthropic reply to society's needs for promotion of stability, because previous methods had proved themselves ineffectual and outmoded (Rothman, 1971:xii). Rothman suggests that the American institutional pattern contrasted with that of England and Australia, in that the American asylum was born out of a benevolent wish and social conscience to treat the deviant correctly, within a therapeutic medium and as part of the human social group (Rothman, 1971:xix). The American political landscape, however, was very firmly a product of the Enlightenment.

The American system may not have made such an overt statement as in England concerning the ‘tidying up’ of society and sequestration of the deviant. Rothman has stated emphatically that sequestration of the mentally ill in asylumdom was introduced with the objective of providing the correct environment for the administration of moral therapy (Rothman, 1971:7). The nation now had a new sense of its society. Americans wrote voluminously about the origins of the deviant, insisting that the causes of insanity lay in the

faulty organization of the community (Rothman, 1971:7). Whereas in England, siting, construction and staffing of the asylum seem to have been rather haphazard, depending on the decision of local government, availability of funds, and quality of available staff, Rothman suggests that the attitude of the American bureaucracy and community emanated from their Puritan origin, so that poverty was not viewed as the result of feckless irresponsibility on the part of the lower orders, as seems to have been the case in England, but as Divinely ordained.

“The social order had divine approbation...the presence of the poor was a God-given opportunity for men to do good.” (Rothman, 1971:110-113)

Further, Rothman records the belief held by asylumdom advocates, that the opportunistic, entrepreneurial and exploitive traits shown in the young and vibrant United States, (that is, in its civilization), placed an untenable strain on the mentally ill and increased their signs of deviant behaviour (Rothman, 1971:111). Therefore, government and state policy decreed removal to a specially constructed institution with specific therapy to counteract the community influences would be beneficial.

-Implementation of Asylumdom in USA.

In 1811, the Society of Friends opened a ward for the insane at Pennsylvania Hospital. The treatment was modelled on that of The Retreat in York, England, and as in all the other asylums which were to spring up throughout the USA, implicit to the asylum was its function to cure, with the psychiatrist using the doctor-patient relationship and the management of time to alleviate illnesses caused by brain disorder (Shorter, 1997:43).

Shorter has stated that in the USA as in England, the story of asylumdom is one of good intentions gone bad (1997:33). Later, sociologists would argue that the system failed because of the unanticipated and overwhelming numbers of patients, others would maintain that many of those admitted were not mentally ill, but were social misfits posing an inconvenience to the smooth organization of a utilitarian society (Shorter, 1997:33). The indisputable facts are that, as in England, numbers grew from a ‘mere handful’ in 1811 to over 150,000 patients by 1900. Historians, such as Scull and Shorter would suggest that this was due to an increase in chronic illness such as neurosyphilis, (the end result of which was mania), and the redistribution of the population, with mentally ill family members no longer cared for within the family.

THE CAUSES OF INSANITY

TABLE 3.2

<u>Moral Causes of Insanity.</u>		Cases % of Causes	
	M	F	Total
Domestic (including bereavement)	4.2	9.7	7
Adverse Circumstances	8.2	3.7	5.9
Mental anxiety/Overwork	6.6	5.5	6.0
Religious excitement	2.5	2.9	2.7
	0.7	2.5	1.6
Love (including seduction)			
Fright or Nervous shock	0.9	1.9	1.4
<hr/>			
Physical Causes of Insanity			
Intemperance(Drink)	19.8	7.2	13.4
Intemperance (Sex)	1.	0.6	0.8
V.D.	0.8	0.6	0.7
Self abuse	2.1	0.2	1.2
Over-exertion	0.7	0.4	0.5
Sunstroke	2.3	2.2	1.2
Accident/injury	5.2	1	3.0
Pregnancy		1	0.5
Parturation		6.7	3.4
Lactation		2.2	1.1
Puberty	0.2	0.6	0.4
Change of Life		4	2
Fevers	0.7	0.5	0.6
Privation/Starvation	1.7	2.1	1.9
Old Age	3.8	4.6	4.2
Other bodily diseases	11.1	10.5	10.8
	14.3	18.9	16.6
Previous attacks			
Congenital Defect	5.1	3.5	4.3
Hereditary	19.0	22.1	
			20.5
Other Known Causes	2.3	1.0	1.7
Unknown	21.3	20.1	20.7

Commissioners' Reports: 1878-89 James Shaw Epitome of Mental Diseases (London and Bristol, 1892) In Mellett, p77.

In addition, there is also the consideration, however, that the influence of the Enlightenment affected the influx of patients from hitherto accepting families. There was not only the reality of industrialization, which did not permit of anyone, in many instances, to remain at home to care for the mentally ill family member, but also the Enlightenment adherence to the rule of law and social equality (Buchanan,1979:108).

In interpreting the concept of 'equality', there are various rather questionable indices which may be used, such as 'social equality' which relates to income, wealth, social status and possessions, or mathematical equality which is perfectly measurable. The social equality to which the Enlightenment movement attached importance, was that of equality before the law, which is essential to the rule of law, and eminently measurable (Buchanan,1979:108).

The Lunacy Laws of England and USA, stated that those who were deemed to be insane were to be incarcerated in the asylum, regardless of the wishes of the individual or the family. Within the asylum, the law perceived that the insane would receive their just deserts: moral therapy, training and rehabilitation. To the legalistic eye, this was fair and just for all; the community was to be safeguarded against the dangerous and the 'idle mob', the mentally ill, would receive treatment. As the probable causes for insanity (already shown on page 143) were so wide and improbable, this could mean that large numbers who today would not be considered to need custodial care, were so deemed in the early nineteenth century. **(51)**

Rothman had to concede that within a short period of time, despite all the careful planning, the numbers of lunatics requiring institutionalization increased dramatically. The enormous intake of inmates, who overcame all arrangements for their rehabilitation by sheer weight of numbers, as well as their chronicity, made routine organization almost a necessity. Untrained in moral therapy, coming from the same often uncouth background as the patients, the attendants may well have been kind in a rough way, but they had no idea as to how to try and retrain the patients where it was possible, nor does there appear to have been any possibility to find time to teach them. In such an environment, many patients devolved into apathy, conforming regardless to the rules, thus reinforcing their dependency on the institution, and extinguishing personal independence (Scull, 1993: 371-374). **(52)** Like England, the custodial arrangements would remain until the end of World War II.

The English concept of Asylumdom exported to Australia.

-Historical factors related to the subsequent introduction of Asylumdom.

In Australia, unlike the USA experience, asylumdom owed its development to administrative dictates in England. The Australian administrative scene is complicated and confusing. This is due to the way in which the Commonwealth of Australia has evolved since the First Fleet anchored in Sydney Cove on 26 January, 1788. The development of government in Australia was important in a number of ways with regard to mental health law and care. The fact that Australia had evolved in a series of separate colonies which were well established at the time of Federation in 1901, meant that lunacy legislation was to develop separately in each colony (Lloyd Robson, 1965:150). With the beginning of Federation in 1901, the Commonwealth Government assumed a number of powers under Section 57 of the Constitution. Mental hospitals and the Lunacy Acts, however, remained under the control of the individual States. This situation has never changed.

New South Wales (NSW) at settlement was a much larger State, and the lunacy care and legislation that evolved related to a much larger geographical area than now, including at various times Queensland, Victoria, Tasmania (originally Van Diemen's Land) and South Australia, (and until 1851 New Zealand). (53) The first asylum in Victoria at Yarra Bend was vested as a ward of the Tarban Creek Asylum in Sydney. The Lunacy Act, 1843 NSW, also had implications for those settlements at Port Phillip Bay and Moreton Bay before they were proclaimed as separate colonies.

The two outstanding Governors of the early days of settlement were, in NSW Governor Lachlan Macquarie (1810-1822), and in Van Diemen's Land, Governor George Arthur (1824-1837) (Lloyd Robson, 1965). Both men had the arduous task of transforming penal settlements into progressive and developing colonies, and coping with hardened criminals, political prisoners and free settlers, each category including mentally ill members. Both Governors were examples of Benthamism and Evangelicalism endeavouring to promote, politically, the good of the majority within a framework of Evangelical Anglican belief utilizing the rule of law. Hard working bureaucrats, each realized early in his time of Office, the possibilities of rehabilitation afforded to convicts who had completed their sentences and remained in the States as freemen. (54)

-The reality of Asylumdom in Australia.

The asylum was established in each State, and presented as a replica of the English establishment: overcrowded, understaffed, inappropriately staffed, and starved of financial, community and emotional support. Many of the attendants had been recruited from the convict ranks, and themselves had been recipients of brutal treatment. (55)

5.Psychiatric practices in all three countries. Outcomes of Asylumdom in each of these countries

-Consolidation of psychiatry as a profession within the asylum.

Paradoxically, the isolation of the psychiatrist within the often remote asylum during the nineteenth century permitted the profession to develop (Bloch and Singh, 1997:6). (56) It gave, for example, Emil Kraepelin, working at an asylum in Munich, the opportunity to study many hundreds of patients and to identify dementia praecox as a psychiatric risk, at the turn of the century, differentiating it from manic depression (Bloch and Singh, 1997:6). The Swiss Eugen Bleuler further refined dementia praecox into schizophrenia in 1911 (1997:6). During the 1930s, physical treatments were attempted, without any true scientific basis for their use. Porter has written of them as:

Signal(ling) the desperation of well-meaning psychiatrists to do something for the forgotten masses of patients in asylums. Equally, they reflect(ed) the powerlessness of these patients in the face of reckless doctors, and the ease with which they became experimental fodder (Porter,1998:520)

Among the treatments attempted, hailed and then dismissed were malarial therapy, for the treatment of General Paralysis of the Insane, (GPI.) by the Viennese psychiatrist Julius von Wagner-Jauregg, Insulin Therapy, and Deep Sleep Narcosis (Shorter, 1997:200-207). (57) Introduced also into asylumdom at various intervals were physical therapy and psycho – surgical treatment.

-Physical Therapy: Electro-Convulsive Therapy (ECT).

This was introduced by Dr. Ugo Cerletti (1877-1963) for the treatment of manic-depressive psychosis-a major psychotic condition in which violent mood swings may occur from mania to suicidal depression. Hospital records show that ECT, unlike the other physical treatments, remains a form of therapy even today, although substantially replaced by appropriate neuroleptic drug therapy. (58)

-Psycho-Surgery.

At Lisbon University, Dr. Egas Moniz, (1874-1955) claimed that obsessive and compulsive psychoses could be improved by frontal leucotomy, in which surgical severance of the connections of the frontal lobes of the brain from the rest of the brain could be effected (O'Sullivan, 1981:95). Moniz received the Nobel Prize in 1949, but was attacked by colleagues for permanently altering the mental states of individuals (O'Sullivan, 1981:95). The question of human rights seems to have been completely overlooked in the rush to implement what passed for scientific procedures. (59)

Outcomes of Asylumdom.

In all three countries, despite good intentions and an undoubtedly altruistic view of the intended reforms, the end results were the same: large impersonal edifices holding in some cases several thousand inmates. Did anyone voice disquiet at the maintenance of asylumdom? In all three countries, the Reformers had canvassed the support of magistrates, Justices of the Peace, and the community at large, as to the advantages of asylumdom. (60) This the Reformers did in large measure. There was also the fact that the anti-asylumdom clique, besides voicing misgivings, did not provide any suggestions as to how keeping the mentally ill in the community could be achieved. (61)

One of the hallmarks of the Victorian Age in each country, was the community acceptance of authority, and it is the authoritative position of the Reformers, political, social, industrial, and economic, together with the singlemindedness in each of the three countries, which seems to have swept the community into accepting institutionalization. It overwhelmed the voices raised in opposition. One lasting outcome of asylumdom, was to create a struggle for the control of the mentally ill between lawyers and psychiatrists which has persisted to the current time. (62)

-Increased tension between law and psychiatry in implementing the Lunacy Laws.

The admission and discharge to and from the asylum, were governed by lawyers, assisted by advice from the asylum psychiatrist. There was rivalry between both professions which emanated from bureaucratic and philosophical foundations. Parliament had enacted the Lunacy Act, 1845 in England, and subsequent Acts of 1853, 1862, 1890. It became relatively easy to decide whether to confine a patient to the asylum, but extremely difficult for the patient to be discharged, because of the inability of the two professions in each of

the countries under review to agree on definitions, for example of safety, or 'reasonable behaviour' (Edwards, 1978:24). **(63)**

Because of the vague 'diagnosis' of lunacy during the endurance of asylumdom, records show that there were those committed to asylumdom, sometimes for their entire lives, because their behaviour was 'different', and did not conform to the social mores. The facility for social injustice was profound. **(64)** The human rights and value system of, for example, a Natural Law system, such as was discussed in Chapter Two, had no place in the asylumdom that prevailed in each of the three countries.

In England, against a growing dissention over the years between lawyers and psychiatrists, a Royal Commission on Lunacy and Mental Disorder met in London and published its recommendations as the *MacMillan Report, 1930*. This led to the passing of the Mental Treatment Act of 1930. **(65)**

6.Conclusion.

This chapter has addressed the issue of what was the concept of institutionalization and how it came to be implemented in England, USA, and Australia. The historical background has been analyzed, and it has been shown that mental illness itself was not identified as a separate illness before the nineteenth century. In summary, a multitude of politico-socio-economic changes occurring at the time of the Industrial Revolution enabled Classical Utilitarianism as a philosophical view to be implemented, so as to organize society for the greatest benefit of the greatest number. It has been shown that Asylumdom itself was the Utilitarian response to the problem of how to treat and look after the large number of mentally ill. Home care of the lunatic had become insupportable, perhaps because of the bewildering number of changes, especially the urbanization of former rural villagers. The significance of the work ethic has been re-emphasized: it was applied to time keeping, and relentless work practices of the industrial factory system, a system in which the mentally ill with their lack of time appreciation were not competent to participate.

The fact that many of the mentally ill were unsupervised and roaming the streets, together with reports of incompetent management of private madhouses, made asylumdom attractive to those Encyclopaedist Reformers who were also of an Evangelical belief. Asylumdom was made all the more reasonable an alternative, by the alienists-those private madhouse

owners, many of whom were not qualified medical practitioners, promoting themselves as suitable to become psychiatrists and managers of asylums. They were accepted as such by Reformers, politicians and community alike, as a result of their persuasive arguments, despite evidence showing often their unsuitability and inadequacy for such responsibilities.

The advent of Utilitarianism and Evangelicalism, together with the socio-economic changes instigated by Adam Smith, as well as the onset of the Industrial Age, made sequestration of the mentally ill deviant with the aim of rehabilitation, seem an attractive option to leaving them in the perceived squalor of their homes without supervision, lacking what the Reformers considered to be a requisite standard of living, and able to roam the streets at will (Scull, 1993:144). By sequestration of the mentally ill, society could be 'tidied up', and it was believed that within the institutional organization, rehabilitation could be effected by altering the environment. The reformed inmate would be able then to return to society and, more importantly, to the workforce.

It has been emphasized throughout this chapter, that the mentally ill, incarcerated in asylums, were not treated as individual persons with particular needs. Asylumdom was a 'one size fits all' solution, to be expected where the greatest good was calculated without regard to individual need. Stress has been laid on the fact that unexpectedly huge numbers of the mentally ill overwhelmed asylumdom, rendering all hope of rehabilitation impossible to achieve. To this problem must be added the fact that the majority of the inmates proved to be chronically ill. It has also been shown that without individualized care and concern, justice, and therefore social justice, was not being afforded to this vulnerable group of society. (66)

The reformers may well have believed they were providing social justice to the mentally ill and their families. While their intent may have been altruistic, the sheer ignorance of the reality of sequestration, with overwhelming numbers of chronically ill, and the squalor and degradation from which they came, made any attempts at moral therapy and rehabilitation impossible. There was an inference also, that the common good existed for the majority, not all members of the community. In fact, by segregating the mentally ill, they could be seen as having been removed from the community, and thus receiving less of the common good than 'normal' society members. They were effectively becoming second class citizens.

Asylumdom became synonymous with a state of regimentation, monotonous repetitive routine, and harsh treatment from ignorant, albeit well meaning attendants.

It is impossible from the distance of two hundred years to imagine the situation in the early nineteenth century in UK, Australia, or USA, and does not allow for judgmental attitudes. Scull *et al* have suggested, that the problem of lunacy was so large, that the Authorities could think of no alternative to asylumdom. It is believed that, lacking any scientific basis on which to justify treatment, psychiatrists did try to assist the inmates by, for example, attempting to prevent stringent application of the Lunacy Acts in each of the three countries under consideration. Without any known cure, psychiatrists attempted various physical treatments. The only one which is still practised and found to be significant in its results is ECT. All these endeavours represented efforts by doctors to try and find some measure of alleviation for their patients, and led to friction with the law over interpretation of the Lunacy Acts.

In Chapter Two, it was stated with reference to MacIntyre, that the Encyclopaedists were right to question the role of tradition when they believed it to be the antithesis of rational enquiry, but in so doing they deprived social justice of its foundation in a law (1985:276-277). It has been shown in this chapter, how social justice has been made vulnerable to the prevailing interpretation of philosophy in the nineteenth century; that is the Enlightenment theory of Classical Utilitarianism as interpreted by Benthamism. This theory by emphasizing the ‘greatest happiness of the majority’, sacrificed the common good as it related to all members of the community, including the marginalized such as the mentally ill.

During the Industrial Revolution, not only the mentally ill were denied justice and especially social justice. It has been shown that many of the new mill owners showed scant regard for the well being of their workers, so that in this new consumer society, compassion and concern for the welfare of deprived human beings was often ignored. In such an environment, the added responsibility of a mentally ill family member may well have proved too difficult a burden to bear. (67)

It is easy for sociologists, revisionists and genealogists to condemn the efforts of psychiatrists and the seemingly unyielding attitude of lawyers to the needs of relaxed

Lunacy Laws. Until the coming of the neuroleptic drugs post World War II, there was no scientific basis for treatment. Psychiatrists and assistants, (now named psychiatric nurses as from the 1930s), were doing the best they could to cope with improbable numbers of patients, for the majority of whom there was no known hope of improvement. The neuroleptic drugs themselves, starting in the late 1940s, as will be shown in Chapter Four, revolutionized mental illness, brought the prospect of community living into reality, and spelled doom for the shadow of eternal institutionalization. The pharmacological and medical revolutions which heralded in the 1950s, provided the trigger which would change health care in all three countries beyond belief.

The changes in mental health care post World War II will be the subject of Chapter Four, where the prevalent views of modernity/modernism will be analyzed to see whether they afforded justice and social justice which Utilitarianism seemed ill equipped to offer. The fate of the mentally ill caught up in the cataclysmic changes following the Second World War will be examined to see whether Postmodernism, especially influenced by Foucault and other anti-psychiatry followers, would be more effective than other philosophical views in providing justice for this deprived sector of society against a background of deinstitutionalization/normalization. It will be shown that in the Post World War II environment, circumstances would lead to the development of the Human Rights Movement. Ultimately, in Chapter Five, an analysis will be made of the Commonwealth/State - wide investigations by the Human Rights Commissioner and by the Australian Health Ministers Advisory Council into mental health care in Australia, examining for the first time, human rights and social justice aspects of mental health care itself.

FOOT NOTES: CHAPTER THREE

1. The word, 'asylum', is derived from the Middle English 'asilum', from the Latin 'asylum', and may be traced back to its origin in the Greek 'asulon' which means sanctuary. 'Asulon' itself, is derived from 'a' without, and 'sulan' right of seizure. An asylum, therefore, would appear, by inference, to be a place of safety offering security, and from which one could not be forcibly removed (Universal Dictionary, UK.1988:105).

2. No hospitals appear to have been specifically established to treat mental illness except in London, where the Priory of St. Mary of Bethlehem, (Bethlem, later Bedlam) was founded in 1247, and received a small number of a cross section of the insane community (Scull,1993:11). By 1403, the number had grown to six, and the cost was defrayed for paupers by community subscription and the local authorities (Scull,1993:11).

3. The fact that little data concerning mental illness is available does not mean that pertinent records were not kept, in relation to an England which throughout the Middle Ages supported, essentially, agricultural industry. When the king's messengers had compiled their record, it was possible to ascertain how much arable land there was, how much pasture, and also how the land was held (Belloc, 1928, Vol.II:90-98). There was then, a ready method for estimating what feudal dues each tenant-in-chief ought to pay the king's income. They give a guide to the proportion of the various classes of the population free or unfree, and make possible, together with the knowledge of arable land, a means of estimating the population at the time of the Norman Conquest-approximately four million (Belloc,1928 Vol.II:96-97).

Because illness was a generalized description of ill health, and mental illness was part of that ill health, no mental health statistics were recorded. Belloc has further claimed that many historians have suggested that throughout the Middle Ages, the population in England was scanty, (perhaps less than two million), and he has refuted this figure as having been based on facts arising from the Domesday survey which historians have used as a *census*, when it is a *fiscal* inquiry, naming not all persons but a certain set of economic units (1928 Vol II:96). The arable land of England throughout the Middle Ages was, therefore seen by Belloc as probably supporting up to six million people (1928 Vol II:96).

4.. Mediaeval Europe, contrary to general belief, was not a centre of illiteracy and sterile ideas. It was a vibrant period between 1000AD. and 1500AD. when there was comparative peace and stability throughout areas occupied by the nation states which had replaced regions in the old Roman Empire, but were loosely linked together in the unity of Christendom. They possessed common values, beliefs and aims (Buchanan, 1979:50-51). One of the great achievements of the mediaeval Catholic Church was its ability to persuade the communities of Western Europe to subscribe to a common standard of ethics. The Church was, therefore, able to use its own authority to provide rules of government, warfare, trade and industry (Buchanan 1979:52). The social pattern of life laid down became synonymous with the late stages of feudalism: a static, rural society in which everybody knew his position and contributed to the common good (Buchanan, 1979:53).

5. Hilaire Belloc has written extensively of the Domesday Book, a charter of the king's revenue which was ordered to be drawn up starting at Christmas, 1085 by William the Conqueror. These recordings came down through the centuries until they met with one of the greatest catastrophes of the Middle Ages; one which would destabilize social life and herald the end of the feudal system: the Black Death (1348-52).

In 1352, for example, The Chancellor of Oxford University, Fitzralph, Archbishop of Armagh, testifies to a scholar-population of 30,000 before the disease, reduced to a third of that number within two years. In Norwich which had a population of 60,000, the total number killed by the plague was 57,374 (Belloc, 1928 Vol III:36-37). London was densely packed with the headquarters of the Guilds, craftsmen, apprentices and artisans of all types. One cemetery alone, prepared especially for the victims, has 50,000 bodies interred (Belloc, Vol. III, 1928:37). Unfortunately, in the Great Fire of London, 1666, nearly all the parochial registers were lost, and it is believed, that this loss, together with the fact that other parts of England were so disrupted that there was no one left in entire towns to register or be registered, gave birth to the myth that has come down, of mediaeval England being sparsely inhabited and health facts unrecorded.

6. With many hamlets and villages left with no-one to work the land or care for livestock, of necessity, much of the land became enclosed by the abbeyes and by Lords of the Manor who turned them into lucrative sheepruns. While enclosures had been in process, often from economic necessity for many generations, after the Reformation when the King's friends parcelled out the Church lands for their own possession, a considerable amount of the villagers' common land on which they were by common law permitted to graze their own cattle, gather bracken for their bedding, and collect firewood, was no longer available to them (Goudzwaard, 1978:59).

7. The term 'mercantile' refers to the new type of merchant who, because of the improvement in ship-building and navigation throughout the later Middle Ages, was able to engage in large scale lucrative overseas trading, frequently amassing large fortunes. Mercantilism itself, is the name given to the policy aimed at exploiting the new sources of wealth recently discovered in the age of exploration and voyage, (the 16th and 17th centuries). It was an attempt to wrestle with the problems of expanding world trade following on the voyages of discovery, subsequent conquest and colonization. Within the European context, the interests of conquered countries were subsumed within the interests of the mother country.

Initially, mercantilism took the form of bullion when Spain exploited the gold wealth of the Americas. Later this was perceived to be short sighted, when the sources became exhausted and the value of bullion had declined in Europe. It was seen to be more satisfactory to be self-sufficient and, ultimately, employ trade and commerce between countries. Economics decreed that exports should be of greater value than imports, thus enforcing a balance of trade. The system prepared the ground for Adam Smith's economic policies (Buchanan, 1970:72-73).

8. Paradoxically, the Church throughout the Middle Ages, was administratively strong, because it had adopted the mantle of social control and power as developed by the Roman empire of Constantine. This gave it a strong centralized authority, but, in the prevailing peace of Christendom, and the consequent increase in trade, the Church became concerned about its perceived temporal power, and the challenges of increasingly powerful individuals in the rich trading centres and nation states. Especially, it became concerned about usury, which it condemned as a practice of lending money at interest to unfortunate fellowmen. In condemning all money lending, the Church failed to recognise the difference between 'pawnbroking' and 'banking' as an investment to encourage trade and commerce. This was one of the great conflicts which led to the Reformation (Buchanan, 1979:53-54). It was the involvement of the Church in conflicts of politics and finance with various nation states and thus a politico-economic conflict, not a religious problem which

resulted in the Reformation, and the asset stripping of the Dissolution of the Monasteries in England (Buchanan, 1979:66-67).

9. The Renaissance itself had sprung from the fall of Constantinople in 1453, with the preservation in the West of the treasures of Byzantium, as far as could be managed, in the shape of *et al* Classical literature, and found a fertile soil in mediaeval Europe. While the mediaeval church had preserved as much as was possible of classical texts, these were often fragments of the originals. Christendom was well prepared intellectually and artistically to receive these welcome additions. Views of, for example, Ptolemy and Aristotle, mathematical principles of Pythagoras and Euclid, the medical instructions of Galen already accepted were augmented, and the foundation laid for the scientific paradigm shift to critical empirical methodology (Buchanan, 1979:59), when the medical authority of Galen himself would be challenged and, in many instances refuted. There was a 're-birth' and rediscovery of ancient works, essentially those of Classical Greece and Rome. The artistic creativity which is associated with this period would also later find expression in development of nationalism and local linguistic culture, such as flourished in Elizabethan England (Belloc, 1928 Volume III).

10. The gothic Cathedral with its soaring ceilings and High Altar so placed as to attract attention, reminded the human being of the nexus of faith and reason, and of our own need to contemplate the metaphysical in recognizing the greatness and goodness of God (Goudzwaard, 1978:4-7). In everyday life, social life was also vertical. Artisans, agrarians and merchants formed the basis of social structure, above whom were placed those in authority: the nobility and the clergy (Goudzwaard, 1978:7-9).

11. This system presupposes a *Wirtschaftsgeist*, or spirit of industry, (the Protestant work ethic) in which labour, production and accumulation of capital are seen as meaningful, even when not leading to commensural increase in consumption possibilities. Weber argued that this spirit was due to the influence of Calvinism which emphasized the idea of vocation and the spirit of self-discipline in the socio-economic life (Buchanan, 1978:79). In this attitude, there may be seen a similarity between the aestheticism of the Old Testament and the later Puritanism of England (Buchanan, 1978:79). Indeed, Buchanan states firmly that the influence of Puritanism, with its emphasis on religious practice, parsimonious living and adherence to the work ethic, made the concept of the Industrial Revolution much easier to put into practice (Buchanan, 1978:78-79).

Calvinism emphasized a personal dedication and effort to labour, which it was claimed was fostered by identifying useful labour with a divine vocation. Individuals, according to Calvin, would eventually have to account to God for the details concerning their accumulated possessions (Goudzwaard, 1978:8). Weber, while writing as a sociologist, was also mindful of the psychological effects of inducement, including that of inducement of eternal reward by God for savings, investment, frugal living and hard work. Weber, however, omitted the aspect of 'predetermination' which is an essential part of Calvinism (in Goudzwaard, 1978:8-9). Tawney, however, refutes the belief in Calvinism as the origin of Capitalism, observing in Religion and the Rise of Capitalism 1938:139) that:

"Calvin handles interestas a pharmacist handles poison." (in Goudzwaard, 1978:8)

Brentano believes that rationalism, which is the spirit of capitalism, can be proved to stem from the Renaissance rather than the Reformation, because it was during the Renaissance that the human being's

interest was awakened in humanism rather than the supernatural (in Goudzwaard, 1978:8). Goudzwaard suggests there is a link from the Reformation to Puritanism within the context of 'work ethic' and 'frugality' to a belief that God demonstrates His approval of such behaviour, by rewarding such capitalists with financial riches in this world, as an inference that such approval shows they are 'predestined' to be 'saved' in the next (1978:8-10). The inference also may be drawn, that if one is virtuous, riches are a reward; the poor are poor and are not saved because they are not so good.

12. A relationship may be drawn between Adam Smith's economic theories and classical utilitarianism. From what has already been written, it is possible to recognize the significance of the ethics of utilitarianism to prevalent economic theories. Utilitarianism was particularly embraced by John Stuart Mill, the spiritual heir of Adam Smith. In its application, however, instead of testing the economic process of increasing prosperity in the light of certain ethical principles, utilitarianism reverses the process. Ethics are manipulated in such a way that the economic process of material increase would be accepted without prior justification (Goudzwaard, 1978:30). Such a principal is in harmony with the goal of rapid economic growth.

13. Samuel Tuke notes that:

Yesterday's madness might be today's eccentricity and become tomorrow's norm...before the present fashion of wearing the beard was introduced, we knew a gentleman whose practice allowing the hair to grow on the face was accepted as one of the indications of insanity: The same remarks apply to the action of anyone who has the courage to wear a more wholesome article of dress than his fellows. (Tuke in Mellett, 1982: 9)

Such a label as 'misfit' or 'mad' was a convenient one for the elite to attach to so many unemployable people of the lower orders who were crowding into the urban areas from the countryside.

14. Behaviours tolerated in a person's primary group (for example, a small family group or village setting), may not be tolerated in his/her secondary group, in this case, that of the new, impersonal industrial city (Giddens, 199:146-7).

15, Charles Dickens' graphic account of the Gordon Riots which occurred in 1780, demonstrated precisely this point in the tragic figure of "Barnaby Rudge." Moreover, the French Revolution of 1785 was sufficiently recent in the minds of the elite as to commit society to a policy of sequestration and rehabilitation of any who might be considered a danger to law and order, and to render them powerless.

16. This theory led to the separation of powers in government between the executive, the legislature and the judiciary; a separation which exists today in what has come to be known as the 'Westminster system'.

17. Deism is often referred to as exemplifying the confidence of the post-Newtonian era. The human being believed there was no longer any need for assistance from a Creator or from a source of natural or moral law (Few, 1979:67). There is a deism, however, demonstrated by Rousseau as "the religion of the heart" in which he states with regard to the belief in God:

"I feel that He is. That is enough for me." (in Few, 1979:87)

18. For this reason, therefore, the comparison of God to a clockmaker was wholly acceptable; the article of perfection once set in motion, no longer required the clockmaker's attention (Heinman, 1945:49). Such a concept had serious consequences on the human being's views of his/her own actions. It provided a convenient model for Enlightenment followers who, using individual conscience as a guide, could believe or

not believe in a Supreme Being as God, or a rational god. If God steps back out of the everyday activities of living, then the rationalist human being can step forward and take his/her fate into one's own hands (Goudzwaard, 1978:21). Concepts associated with change may be developed according to one's own satisfaction, and one's own thought of the issues of, for example, industrialization.

19. Giddens has argued that capitalism as described by Marx, is not the only fact which shaped the modern world at the beginning of the nineteenth century. Giddens believes that modern society is different from the traditional lord-peasant, master-servant situation, because of distinctive forms of social integration associated with the nation state (Giddens, 1985:2). With large groups of people concentrated particularly in the newly developing industrial cities, Classical Utilitarianism as practised by Bentham was seen by the Government of the day as providing an ideal philosophical framework within which to develop the theory for promoting central government and to practise social control (Giddens, 1985: 146-147). Bentham himself described his philosophical view as:

By utility is meant that property (which) tends to produce benefit, advantages, pleasure, good or happiness...or to prevent the happening of mischief, pain, evil or unhappiness to the party whose interest is considered (whether) the happiness of the community in general (or) the happiness of the individual. (1789: Introduction. In new edition, 1948)

20. Besides the underprivileged, among those who were influenced by Wesley and fell under the spell of Evangelicalism were many Low Churchmen whose views harmonized with the doctrine of Utilitarianism. Most were Members of Parliament and conservative in outlook, but ready to work not only with radicals and freethinkers, such as Bentham and Mackintosh, but also with the Church Missionary Society, Foreign Bible Society, Religious Tract Society *et al* (Scull, 1993:84-88). These societies owed much to their influential supporters and to the latter's initiative. All these members had a high sense of responsibility to God for their actions, and consequently, had powerful influence over English society. Descendants of this sect included Lord Macaulay and Florence Nightingale. Hannah More, one of their members, is credited with being responsible for introducing the 'English Sunday' (which was brought to Australia later by free settlers); she also produced the 'Christian Observer' pamphlet.

21. Among Macaulay's converts were William Wilberforce, Member of Parliament and friend of William Pitt the Younger, Romilly, (a relative of the Duke of Marlborough), and Ashley, (heir to the Earl of Shaftesbury) (Scull, 1993:84n35).

22. These men used their position to influence Parliament and social opinions concerning social conditions of certain groups of deprived people. Early in the nineteenth century, these and several other influential men began to take an interest in social reform.

23. Bentham would use his formula: inquiry, legislation, execution, inspection and report, within his framework of Classical Utilitarianism as both a philosophical view and a political strategy. By influencing the organization of a strong central government, with a newly formed police force to reinforce law and order, and by sequestration of the deviants, Benthamism demonstrated a means of preventing the 'idle mob' from falling into lawless ways, promoted a law abiding society, and at the same time allowed the work force to concentrate entirely on work (Scull, 1993: 85-86).

24. The uncovering of inhumane treatment toward the mentally ill, such as chaining them up in their homes, the incompetence of local and haphazard administration for these people, and the threat to law and order unless the mad were disciplined within a special institution were all aspects of a centrally run, bureaucratic system which Bentham was committed to implementing.

25 Whigs and Tories were the political parties governing in Parliament during the nineteenth century. 'Whig' was originally a term of derision in Gaelic, and was used to describe cattle thieves. Later it was transferred as a term to describe Scottish Presbyterians. After the ascendancy of Queen Anne during the eighteenth century, it became associated with aristocratic landowning families, and the financial interests of wealthy, middle classes. 'Tories' were the county gentry, associated with Anglicanism and the squirearchy. Pitt the Younger was a notable Tory leader, representing county gentry, merchant classes and official ministerial groups. The Whigs, led by James Fox, represented the interests of dissenters and industrialists, and were associated with a desire for electoral, parliamentary and philanthropic reform (Feely, K, 1924). Hence the members of the Reform Party including Wilberforce and Ashley, were prominent members of the Whig Party leading the Reform Movement, although conservative in outlook. Several of them wished to bring about reform without changing the structure of government. This attitude Bentham despised (Scull, 1993:85-86).

The following description of the Reform Movement has been freely adapted from Encyclopaedia Britannica (1963:45-47) to which reference is recommended for a full description of the Movement.

The Reform Movement which was a movement toward parliamentary electoral reform, was active in England 1769-1832. In the early eighteenth century, the system of representation was the result of a prolonged deposit of at least eight hundred years. English franchises for boroughs and counties differed fundamentally. A *borough* was a town possessing a municipal corporation and special privileges bestowed by Royal charter. The term also defined a town which sent representatives to parliament.

Distribution of boroughs represented roughly, a distribution of populations at the end of the sixteenth century. By the eighteenth century, there was a hiatus between groups of the existing system. Reformers' during the eighteenth century analyzed the system and revealed bewildering anomalies. For example, a vote permitted in one borough could be denied in another. Custom had degenerated into caprice, or actual manipulation. The county of Cornwall, paying 16 out of 513 parts of the land in tax, returned 42 members. The City of London returned 4 members.

By 1830, the effects of the Industrial and French Revolutions, and above all, the influence of Godwin, Price, Priestley, Adam Smith and Bentham, captured the minds of the old gentry and new individualists (Lecky:1892). In the final phase of the Reform Movement, Cobbett, Lord Coke of Holkam, Cartwright, Bentham, organized by Francis Place, Lord Grey and Lord John Russell, were aided by the election of Sir Francis Burdett, a wealthy and ardent reformer as well as a fearless champion, to the House of Commons.

The chaotic parliamentary system which existed at the beginning of the nineteenth century was such, that social control, such as Bentham envisaged, through a centralized, co-ordinated government, could only be implemented within a reformed parliamentary system. The fact that lunacy reform, whether one agreed with its actual implementation or not, was so long in coming to fruition, is explained by the fact that every proposal to the House of Commons met with failure until after the changes of 1832.

26. William Battie, instigator of the founding of St. Luke's Hospital, also owned his own private madhouses in Clerkenwell and Islington to which the wealthier patients could be transferred. Battie was a self-made man,

and was reported on his death to have left an estate to the value of approximately one to two hundred thousand pounds (Ayres, 1971:38).

Matters of exploitation and brutality involving mental illness had formed an acceptable talking point since the madness of King George III had become known, together with the, at times, brutal treatment meted out to the monarch at the end of the eighteenth century (Hunter and MacAlpine London, 1969). Inmates of these private institutions were easy prey for unscrupulous or avaricious doctors, (the 'alienists' who were trading in lunacy). At York, for example, where a small State institution had been founded following the 1807 Inquiry, an official investigation provided evidence of rape, murder, forging of records, mechanical restraint and massive embezzlement of funds (Scull, 1993: 111). At Bethlem ten naked women were discovered, chained to the wall by one arm. Several patients had lost toes and feet to frostbite (Scull, 1993: 111).

27. Tuke was a Yorkshire tea and coffee merchant, a Quaker, who following the death of a mad member of the Quaker sect in a York private madhouse, decided to open a house for the reception and treatment of affected Quakers, using the Quaker beliefs in quiet reflectiveness, gentleness, consistency and kindness, encouraging self-control, and employing what would today be called 'behaviour modification' (Scull, 1993:96-101). This treatment Tuke named 'moral therapy'. He himself was not anxious to employ doctors who at this stage were still not averse to brutality, and about whose medical competence he expressed grave reservations (Scull,1993:188-189). The house, named "The Retreat" is still part of psychiatric care today.

28. Tuke believed that in using his methods, which implemented Quaker precepts of meditation, self-discipline and understanding, (Scull, 1993:188) cure could be obtained, and indeed demonstrated that this was so. One has to ask whether this was due to lack of differentiation between major and minor psychoses at that time. Minor psychoses, such as exogenous depression are transitory; with rest and support, the patient may make a satisfactory recovery without any professional or external input. Like Esquirol, Tuke too, insisted on the removal of the mentally ill from family and environment, which he believed not only contributed to, but actually caused the malady (Porter, 1998:498).

29. In UK, there is, as Pearson has indicated, the fact that the Reformers were producing evidence of 'squalor' seen from their own position of advantage (Pearson, 1975:143-176). Scull has also ventured the belief that where the sane lived in squalor and misery on the verge of starvation, the conditions for the lunatic were hardly likely to be better. All would offend the sensitivities of the aristocracy and middle classes to whom such conditions were unbelievable, and evidence of a 'lower type of person' (Scull, 1993:144-145).

30. The proposals put forward included the provision of State asylums to be constructed and conducted at public expense for the compulsory intake of all pauper lunatics, and the licensing of private institutions, thus taking care of the mentally ill out of the private sector and away from the dangers of care for profit. Secondly, there should be a meticulous system of inspection by outsiders. The latter were not to have any connection with the asylum, in order to maintain a standard of care by the keepers (*Report of the Select Committee on Madhouses, 1815-1816*).

31. Members of Parliament by and large, reinforced the Patrician views of their families from whom they came, and dictated what they deemed fit in terms of kindness and justice in their dealings with tenants and dependants on their estates (Asa Briggs,1959:40). They would not have seen it as social justice to involve their electorates in, for example, decision making. Their hegemony of training and of education as described by Gramsci, prepared them to believe that they belonged to a ruling class who possessed the authority to

decide what would constitute justice for those subject to them (Cammatt, 1967:207). The fact that the Reformers believed in asylumdom was sufficient justification in their eyes for submission of the Lunacy Bills to Parliament, and carrying through these Bills to enactment.

32 The terms of the Lunacy Act 1845 included:

- The creation of a permanent Board of Lunacy Commissioners.
- The erection by Justices of lunatic asylums to be financed by the local rates.
- Committees of Visitors to regulate and superintend the asylums, which would be visited by Lunacy Commissioners in London, and Justices elsewhere. All other establishments housing lunatics to be visited also by the Commissioners.
- Rigorous imposition of new procedures regarding the admission and discharge of lunatics including certification for admission, and records of information for the Lunacy Visitors.
- Strict procedures to be followed for discharge (Ayres 1971:38).

33. All criteria related to health, doing no harm to the patient, and assisting in healing. Healing, however, in the pre-asylumdom era of the eighteenth century and well into asylumdom era of the nineteenth century as stated in Chapter One of the thesis, had its theoretical and intellectual foundation in humoral medicine, not science. It was based on mediaeval physiology derived from the teachings of Galen, a Greek physician, who had taught that a person's health and character were determined by any of the four fluids of the body: blood, phlegm, choler (yellow bile) and black bile (Porter, 1998:75-81).

34. This statement may appear difficult to conceptualise in relation to modern medical theory. Because of the humoral theory which asserted that mental illnesses such as depression or anxiety were due to 'black bile', and the hard dying belief that (the still unknown) psychoses such as the schizophrenias were the result either of sin or God's Will, all mental illness was seen as physical, because it involved the *brain*, but not the *mind*, which was seen as being independent. (See also fn 37).

35. At the beginning of the nineteenth century, these three categories served all types of ailment that befell the human being. Mental illness, together with all the other maladies of that time, appears to have been coped with as best people could, depending very much on their financial status. Apothecaries had served an apprenticeship with either a physician or surgeon, (or both), learning in a 'hands on' environment. Except for the surgeon, (who was descended from the mediaeval barber-surgeon of blood letting fame), there was no other specialization in the medical world. The advent of the medical specialist was to become a phenomenon of the Victorian era. The 'mad doctor' was not *specializing*, merely *accepting* patients who came to him and happened to be mad.

36. Hence, these doctors became known as psychiatrists and were identified as such. Their great problem was to identify and prove the existence of the necessary physical lesions which they asserted were the causative factors of lunacy. This problem was already public knowledge at the time of the lunacy investigations which opened early in the nineteenth century.

Haslam prophesied in 1809 in Observations on Madness and Melancholy (1809:5) that he believed:

"To discover an infallible definition of madness will be found impossible."

Neville in On Insanity: Its Nature, Causes and Cure (1836-7), has asserted that alienists were attempting to:

“Define with precision what doesn’t admit of being defined.”

37. Descartes, Rene, (1596-1650), is described by Cargile as:

“The chief architect of the Seventeenth Century intellectual revolution which destabilized the traditional doctrine of mediaeval and Renaissance Scholasticism, and laid down the philosophical foundations for what we think of as the ‘modern scientific age.’” (in Honderich, 1995:188)

Essentially, however, much of Descartes’ early work might now be viewed as scientific, relating to physics which involved mechanical principles. Nevertheless, in his Third Meditation, (1641), Descartes affirms that he finds within himself the idea of infinite perfection, which he believes has been placed there by an actually perfect being: God (Cargile in Henderich, 1995:190).

Again, Cargile states that Descartes wished to join philosophy with science. Descartes had observed that philosophy resembles a tree, having its roots in metaphysics, the trunk in physics, and the branches in the specific sciences, reducible to three principal subjects: medicine, mechanics and morals (Cargile in Honderich, 1995:191).

However, the Descartes concept of a comprehensive knowledge system unravels when faced with the phenomenon of thought. Descartes believed (for a variety of reasons, such as theological, metaphysical and scientific), that the thinking substance (the mind), was completely distinct from the world of matter. The latter, Descartes believed to be ‘extended’ spatial, whereas the mind was unextended, indivisible and ‘non-spatial’. This conclusion came to be known as Cartesian dualism: that is, the view that the mind or soul (indistinguishable according to Descartes), is entirely distinct from the body, and would not fail to be what it is, even if the body did not exist (Cargile, in Honderich, 1995:191).

The concept of psychiatry drew heavily on Descartes’ concept of dualism, which satisfied the scruples of the evangelists, who were content that the soul was not being interfered with. To this day in England, the subtle differentiation may be seen in two leading institutions. In London, *The National Hospital for Nervous Diseases* in Bloomsbury is the chief neurological hospital for the treatment of diseases of the nervous system, while the *Maudsley Hospital*, the modern descendant from *Bedlam*, is the foremost psychiatric hospital dealing with mental illness, that is illness affecting the brain not the *mind*. All mental illness at the dawn of psychiatry, was seen as a physical illness. The concept of dualism was used by the alienists to justify their establishment of psychiatry as a branch of physical medicine, with themselves as physicians specializing in the new branch of medicine as psychiatrists.

38. Reformers and asylum doctors alike in each country were for the most part, wholly in favour of asylumdom. They could point to Tuke, Esquirol and Pinel as eminent authorities on lunacy care, who gave weight to their voices.

39. The contention by men of substance, such as Samuel Tuke, who used his own house, “The Retreat” at York in order to practise moral therapy, and stated that the latter did not require professional input, spelt doom to the ‘mad doctors’. If all the mentally ill were to be cared for in asylums and the private ‘madhouses’ were closed, they foresaw the control of madness passing out of their hands and into the hands of those practising moral therapy (Scull, 1993: 198-192).

40. Michel Foucault has described the relationship between psychiatrist and patient as:

“That other form of madness, by which men, in an act of sovereign reason, confine their neighbours and communicate and recognise each other through the renowned language of non-madness.” (1961:ix)

Scull criticises Foucault's denunciation of psychiatry as a manifestation of his:

"...assault on the machinations of bourgeois Reason, and reflects an assault on the Enlightenment."
(1993:382)

41. Here it is possible to refer to Wittgenstein's notion of language games, in relating the psychiatrists' transference of judgment into social reality. Wittgenstein claimed that rules for the use of words are neither true nor false; they are not answerable to reality nor to antecedently given meanings. Meanings of words change according to their usage. Wittgenstein further states that the possession of language extends the will. Here one may give an example of the individual, uneasy and ignorant about mental illness who describes psychiatrists as 'trick cyclists', implying that they are charlatans. The language of such an expression does not expand the individual's will to understand the plight of the mentally ill, only to satisfy his/her own misconceptions (Hacker in Honderich, 1995:914-5).

42. One is obliged to come to the same conclusion as Freidson:

When this emerging profession sought to establish its dominance and authority, the process determining the outcome was essentially political and social rather than technical in character; a process in which power and persuasive rhetoric were of greater importance than the objective character of the knowledge, training and work. (Freidson, 1970, a:79)

43. Tuke himself, Pinel, Esquirol and the alienists/psychiatrists, all believed that the undesirable environment influenced the mentally ill and caused the undesirable behaviour. Using the example of Tuke's perceived successes with moral therapy, doctors such as John Connolly claimed that asylum treatment would demonstrate humanitarian treatment, with kindness and understanding replacing brutality. The mental deviants-'misfits'-mentally ill, would be taught self-control and restraint, and the 'work ethic' would be promoted (Connolly, 1847:2 in Scull, 1993:268).

44. There were those, though, who were not persuaded by the large chorus in favour of institutionalization, and voiced their misgivings, warning of the unsuitability of isolation and segregation which they believed would increase the dependence of the inmates. Such earnest arguments, however, did not kindle debate. They are recorded as having been ignored at the beginning by the Asylum lobby in each country (Scull, 1993:142). In UK, unlike their opposition, the Reformers, who spoke as with one voice in Parliament, and the alienists, who saw professional possibilities in asylumdom, the anti-asylum group were not well organized. They wrote individual letters to Parliament without consulting each another, or seeking simultaneous and unanimous support from their colleagues. Consequently, they appeared to be small in number and disorganized.

45. It is suggested that these were possibly suffering from stress and minor psychoses, whose removal from a stressful or uncongenial environment was sufficient to bring about improvement. That the numbers of inmates nevertheless were proliferating, only reinforces how overwhelming were these increasing numbers consisting of incurable patients whose presence would be permanent.

46. Nancy Tomes has suggested that for the most part, the first overtures to professional intervention on grounds of insanity came from the family (in Giggs and Smith, 1988:14,138). Andrew Combe emphasized that the decision to label someone as insane was quite separate from deciding whether confinement in an institution was appropriate (Combe, 1831: 345, in Scull 1993).

It was possible for families albeit reluctantly, to hide what the stigma of deviance saw as 'shame,' and discard such members into the asylum. John Walton (in Bynum *et al*, 1985: 132-146), has stressed that he believes

women, exhausted and depressed by the perpetual round of pregnancy and childbirth, and the worn out who had given up the struggle for existence, also formed some of the inmates.

The presence of the asylum perhaps unconsciously, made it possible for a family to dispose of other types of troublesome family members, as the following letter to the House of Commons confirms:

...There is a disposition among all classes now not to bear with the troubles that may arise in their own houses. If a person is troublesome from senile dementia, dirty in his habits, they will not bear with it now. Persons are more easily removed to an asylum than they were a few years ago. (*House of Commons, Report of the Select Committee on the Operation of the Lunacy Law, 1877:166*)

47. For example, the recently opened (1846) Littlemore Asylum made a charge to the parish of eleven shillings per patient. Two years later, in 1848, despite rising prices for provisions and higher staff wages, the cost had been reduced to seven shillings and sixpence (Scull, 1993:231).

48. There was a genuine medical reason for the unexpected amount of chronicity, which was due in no small measure to the prevalence of General Paralysis of the Insane (GPI), a manifestation in the form of Dementia, of the chronic terminal stage of Neuro-Syphilis and believed to be an undesirable consequence of the Napoleonic Wars (Shorter, 1997:56-57). Until the advent of Penicillin, there was no drug therapy which could treat this condition in its primary phase and prevent the onset of GPI. The other well known disease relating to the rise in asylum numbers was Korsakoff's Syndrome, which results in loss of appetite, malnutrition, thiamine deficiency, chronic psychosis and memory loss—all the outcome of excessive alcohol consumption and a well documented problem during the Victorian age in England (Shorter, 1997:89).

49. These believers in a church purged of old forms and abuses, and a society purified of gross evils, were unhappy under King Charles I and under Archbishop Laud who had declared war on them. Other Dissenters such as the Quakers, would gather in Pennsylvania, and Catholics in Maryland. It is believed that these strongly religious influences affected the development of Enlightenment thinking, and to the eventual attitude of the new country to the marginalized people, such as the mentally ill.

50. The American Revolution of 1776 preceded the French Revolution of 1789, and was different in that, unlike the French Revolution which conformed to the ideology of revolution, the American Revolution demonstrated a legitimate attempt at freeing itself from the state of colonization, and the authority of English rule (Goudzwaard, 1978:54). (For further details concerning the ideology of revolution, please see Walzer in Honderich, 1995:773)/

51. Despite assertions that the quickened pace of "civilization" was responsible for the increase in numbers of the mentally ill, a corresponding increase in the amount of illness among rural dwellers was reported. Again, as in England, and on the European Continent, physicians, unable to classify and identify major and minor psychoses listed the most improbable of causes as had their colleagues in England and as would also occur in Australia. One physician in New York listed 43 causes for disease among 551 patients in 1845. They ranged from ill health (104), religious anxiety (77), and loss of property (28), to excessive study, (25), blows on the head, (8), political (94) (Shorter:1997). As in England, with the proliferation of numbers, the impossibility of maintaining moral therapy grew. Psychiatric care became custodial, and stories of cruelty spread with the employment of ignorant and grossly overworked attendants.

52. Given the poverty of most of their relatives, and lack of communication, this situation further distanced the patients from their families in each of the three countries. Connolly, for example on this subject

The effect of living constantly among mad men and women is a loss of all sensibility and self-respect or care; or not infrequently, a perverse pleasure in adding to the confusion and diversifying the eccentricity of those about them...Some inmates manage to adjust (to peculiar asylum routines) and those who manage this transition ... are at the same time reducing their ability to function in the outside world...they become content to remain...until they die...a continued residence in the asylum (is) gradually ruining the body and the mind. (Connolly, 1830:4-5, 20-31)

In England, George Ness Hill, (in Scull, 1993:139), author of one of the most well known nineteenth century text books on mental illness, John Reid, also a well known physician writing in Diseases at the University of London, (in Scull, 1993:292, 139, fn.83), and Thomas Bakewell, echoed the concerns of John Connolly:

Large public asylums for the Insane are certainly wrong...for nothing can be more calculated to prevent recovery, from a state of insanity, than the horrors of a large Mad House, close confinement, and a state of idleness in the company of incurable lunatics. (Bakewell: *A Letter to the Select Committee of the House of Commons*, 1814 in Scull, 1993:140, fn88)

53. Lunacy Act, 31 Vic. No. 309, 1867, Victoria, Lunacy Act, 29 Vic. No. 19, 1869, South Australia, Mental Hospitals Act, 22 Vic. No. 22 1858, Tasmania, Lunacy Act, No. 15, 1903, Western Australia, Insanity Act No. 8, 44 Civ 1884, Queensland, Lunacy Act, 1843, 7. Vic. No 14

54. This did not alter the fact that the penal law was harsh and often inhuman. Hospitals founded initially, catered for a mixture of the sick, frail and mentally ill so that there is no specific recording of insanity *per se* at the time of the First Fleet. Nor is there any recording after the arrival of free settlers, of private madhouses such as had existed in England. Presumably, those who could afford to do so, cared for their relatives at home, restraining them when necessary, in the time honoured manner by manacles and chain.

In Van Diemen's land, for example, the system Arthur inherited had not allowed for any differentiation between felon and lunatic. All who deviated from the rules and regulations were punished brutally. For those such as lunatics who were troublesome, they were conveniently manacled and confined when necessary. Oral history at Port Arthur Settlement has maintained that solitary confinement in underground cells, without light or ventilation was reputed to reduce the most hardened criminals to insanity within twenty four hours.

55. It is not surprising, therefore, to find that, for example, a Royal Commission investigating *The Present Conditions of the Asylum for the Insane in Tasmania*, in 1883, received a written statement that:

Some months ago, after I had been thrown down, and my ankle bruised by attendants B-- and M—(my arms being at the same time twisted), I was placed in a double-door cell...M—struck me a blow with his fist and said: "I will show you what I can do with you"...I have always striven to oblige...In vain would appeals (be made) to Dr. MacFarlane for justice and protection, as he encouraged the officials in tyranny and the use of force by listening to the statements of officials, but not to statements of patients. (Gowlland 1981:80)

In the same year, a letter was sent by Mrs. Ra—to Dr MacFarlane:

I wished to ask you if nothing could be done to get rid of the vermin that Mr. Ra—is smothered in. He has them in his beard, under his arms and lower person. No wonder that he tears himself about when he gets his hands at liberty. (Gowlland 1981:81)

At the enquiry, the Select Committee was offered the statement that the patient, James Ra--- *bred* vermin. Dr. MacFarlane assured the Committee that James Ra--- had been washed and cleaned three times per day. However, the attendant suffered from defective vision, so that new arrangements had now been put into place for care of the mentally ill (Gowlland, 1981:81). James Ra---mercifully soon died.

56. For convenience, the geographical isolation of asylums led to houses being erected for the psychiatrists and attendants within the asylum estate, thus laying the foundation for a subculture to rise within the asylum walls, where life could continue, with little if any input from the outside world. This segregation whilst permitting psychiatry to concentrate on developing its discipline, did not assist the new profession in its relationship with the existing medical profession. The asylum psychiatrist was seen as a State paid servant, isolated from general medicine, and physically and socially removed from his fellow professionals (Scull, 1993:247).

57. *-Malarial Therapy*, was introduced in Vienna by Julius Wagner-Jauregg. Quite by chance he observed a patient who contracted erysipelas (a streptococcal infection) experience a remission of her psychosis. This primed his interest in the probable relationship between fever and madness (Shorter, 1997:192). Robert Koch the microbiologist, in 1890 developed a vaccine: tuberculin, which he believed effective against tuberculosis. Wagner-Jauregg injected tuberculin into several patients suffering from neurosyphilis, with the aim of giving them tuberculous fever. It was believed that the fever itself would arrest the progress of the disease on the grounds that syphilis spirochaetes are heat sensitive (Shorter, 1997:193). By 1909, long-term remissions of the symptoms of neurosyphilis were obtained using tuberculin. The experiments were discontinued, however, because Wagner-Jauregg believed the tuberculin to be too toxic (Shorter, 1997:193). He then reverted to substituting malaria for tuberculin, because it had the advantage of being controllable with quinine. From 1917-1918, some nine patients were treated with malarial therapy and their symptoms abated. They were not cured, but restored to an almost normal life. Instead of progressing to the stage of dementia, the patient was able to live within the community (Shorter, 1997:194). Nevertheless, the experiments were discontinued, because the treatment proved to be cumbersome, dangerous and relied on obtaining the correct blood group for the recipient patient at a time when blood grouping was in its infancy. Furthermore, malarial therapy was prohibitively expensive (Shorter, 1997:194).

-Insulin Therapy, originated in Vienna, and was enthusiastically embraced especially by British psychiatrists, who reported that insulin coma therapy assisted in lifting the depression of the involutional melancholic, and obliterated the delusions and hallucinations of the schizophrenic (Shorter, 1997:200-207). It was acknowledged, however, that such a treatment was both dangerous and unpredictable in its outcomes.

-Deep Sleep Narcosis, was instituted by Dr. Neil McLeod, an Edinburgh medical graduate who unwittingly stumbled upon the use of large doses of bromide in treating patients with acute mania (Shorter, 1997:200-207). Following his apparent success, McLeod treated eight more patients, some of whom died. The permanent 'cure rate' is unknown. This treatment was modified for the use of barbiturates, which were less toxic than bromide in their effects. Such treatment required careful monitoring of the patient's unconscious state, and it is significant that the persistent use of this therapy in NSW in the 1970s, long after it had been abandoned elsewhere, was one of the factors which led, eventually, to the investigation of Mental Health Care in Australia by the then Commissioner of Human Rights in 1993 (the Burdekin Report, 1993:4).

58. For unknown reasons, it has been discovered that the passing of controlled or electric current between the electrodes applied to a patient's temples, is a highly successful treatment for the depressive phase (O'Sullivan, 1981:104).

The conditions in which therapy was undertaken in those early days, however, have been described by professionals who administered ECT, to have been perforce barbaric and inhumane; psychiatric nurses have recalled that it was customary to give ECT for example, to the patients en masse. Anaesthesia were not used;

muscle relaxants were still unknown. Records viewed at psychiatric hospitals in UK and in Australia bear witness to many patients suffering from broken limbs as a result of muscle spasm following ECT administration. These points are emphasized, because so strong was the reaction of patients and their relatives to such treatments, that hostility today is marked among civil libertarians in each of the three countries under review, who believe the enforced delivery of ECT deprives patients of their human rights, even though today, their legal rights are more safely guarded and anaesthesia are always used. Many psychiatrists argued in favour of ECT at the same time that many members of the community expressed hostility towards ECT. with statements such as:

“...Patients are being given electric shocks to make them compliant,” (*letter to ‘The Advertiser’*, Adelaide, 21 May, 1979. (in O’Sullivan, 1981:101)

There is a very real need for ECT even today, when drug therapy has reduced the use of such therapy. ECT remains essential for treating the severely depressed patient who poses a very real suicide risk. There is a three weeks’ time-lag between commencing anti-depressant drug therapy and reaching the therapeutic dosage. During this time, a patient might well commit suicide (O’Sullivan,1981:103).

It is difficult to explain the opposition to ECT which persists even today in all three countries, and it is suggested that the objections may be aesthetic. It is not a pleasant sight to see a patient reacting to the treatment but neither is an abdominal operation, yet the same outcry is not produced concerning the thousands of general surgical operations performed annually, some of which are viewed on television nightly. O’Sullivan has commented that perhaps it is because of the brain being involved that there are objections, that presumably no-one would object if the current was applied not to the temple but to the chest to prevent death from cardiac arrest (O’Sullivan, 1981:102). Yet changes to cardio-electric voltage in the defibrillating process can affect the individual as dramatically as ECT.

59. It does seem remarkable that, considering the grave responsibilities accepted by psycho-surgery manouevres, few of the then State Lunacy Acts nor later State Mental Health Acts considered psycho- surgery merited even a mention in mental health legislation. Nor is there evidence that pilot trials were carried out in any of the three countries under review before full scale implementation of this invasive procedure (O’Sullivan, 1981:95).

60. That this state of affairs would remain unchanged may be evinced by reference to the work of sociologist Erving Goffman, who, writing as a revisionist as late as 1961, was to criticize asylumdom specifically in USA, but in terms which were applicable to all three countries under scrutiny, as a closed system that infantilized patients and restricted their lives within a ‘total institution’. He wrote:

On admission, the (patient) begins a series of abasements, degradations, humiliations, and profonations of self...there is a strong feeling that time spent in the establishment is time wasted...or taken from one’s life...the inmate tends to feel that for the duration of his stay, he has been totally exiled from living. (1961:pp. 14, 67-68, 111)

61. Porter, Scull and Shorter all appear to agree that the pro-asylum camp had so convinced themselves of the efficacy of institutional life, that they literally ignored any rational arguments against them. Scull has further suggested that this was not just the blindness of ‘tunnel vision’ or singlemindedness. It was the hallmark of the reformer, dedicated to his cause, who:

Must provide convincing, and therefore one-sided, ‘proof’ of his contentions. If he is to remain dedicated to his task in the face of opposition and ridicule he is sure to encounter, he must possess

abundant confidence in the validity of his chosen alternative if he is to convince others of the urgent necessity to change existing arrangements:... (Scull, 1993:143)

No effort had been documented of a systematic attempt in any of the countries to discover the number of insane living at home, the seriousness of their condition, nor of considering how they might be treated. Fox believed that the Reformers relied on anecdotal evidence, carefully chosen, to support their belief that leaving the mentally ill at home would be tantamount to condoning abuse (Fox, in Scull, 1993:137 n71).

This provided a dilemma for those who were not totally convinced of the efficacy of asylumdom, but could not be responsible for maintaining the mentally ill in appalling conditions in the community. The Reformers were arguing from their own definition of 'squalor'. From the paupers own point of view, to have a dry roof over their heads, a bed to themselves, adequate food and security against eviction if their relatives did not pay the rent, were possibly not stark conditions but bliss.

To have changed so many conditions in the community so that the mentally ill might be treated at home, would have necessitated a type of welfare system to provide benefits for the mentally ill. Sane paupers would have been administered by the Poor Law, in England, based on a principle of less eligibility (Scull, 1993: 145). Such a system would have been an administrative nightmare, and there was also a great fear among the wealthy, that the sane paupers would feign insanity, and claim the financial benefits. There was a fear that such a course might weaken the entire social fabric of Victorian society (Scull, 1993:145).

62. In an attempt to uphold justice, in accord with Enlightenment philosophical views and to prevent the imprisonment of sane people who would thus lose their liberty, lawyers framed each of the Lunacy Laws carefully, mindful of the rule of law, and defining the concept, for example of 'safety' with precision. The psychiatrist, however, did not have a corresponding precise moment in a mental illness, when s/he might define a mentally ill patient as being 'safe'. The doctor viewed (as s/he still does), safety along a line of probabilities, and called on personal experience to decide whether a patient is probably safe to return to the community. Psychiatrists' performance in determining the boundary between insanity and responsibility has been endlessly controversial. From the beginning of asylumdom, there was no fundamental agreement on criteria to differentiate sanity from insanity. This situation had profound complications. Beyond obvious signs of bizarre or abnormal behaviour which demonstrated mental disturbance, there was a vague indeterminate area where 'behaviour' could be subjectively defined (Browne,1837:8). Because of the difficulties in meeting the definition of this and similar concepts, friction occurred between the two professions, and remains to this day.

63. From the time of Tuke and Pinel, at the beginning of the nineteenth century, under the influence of Enlightenment views, doctors had attempted to introduce tolerance and kindness within asylumdom, perhaps as an early reflection of social justice. That they were overwhelmed by unforeseen circumstances was not their fault. Within each of the Lunacy Acts of the nineteenth century, in each of the three countries under review, admission to the asylum was Involuntary. That is, it was controlled by legal interpretation of the Lunacy Act. As a result of certification by an authorised person: a magistrate, Justice of the Peace, or in some cases a policeman, the victim was deemed mentally ill, lost his/her freedom, and could be consigned to the asylum indefinitely (O'Sullivan, 1981: 27-39). In order to be discharged, the patient had to fit precisely, the determinations of the Lunacy Act of that State and country with regard to 'safety'.

With the Lunacy Act of 1890 in England, which attempted legally to prevent wrongful incarceration, legal controls on asylums reached their height. Jones has asserted in Mental Health and Social Policy that:

“From the legal point of view (The result) was nearly perfect. From the medical and social point of view, it was to hamper the progress of the mental health movement for nearly seventy years.” (Jones, 1960:94)

Among psychiatrists in each of the three countries, there was a rising conflict over the constraints of the Lunacy Laws. When patients did improve after a stay in the asylum, they were frequently denied the right to leave, because, as Edwards has explained, the doctors could not guarantee that a relapse would not occur in the future (Edwards, 1978:24).

64. Because of the wide-ranging list of causes and conditions meriting incarceration, throughout the Victorian Age and for most of the time span of asylumdom, a travesty of justice was allowed to occur. It is re-emphasized that the Judaeo-Christian covenant of the Ten Commandments had devolved through the rational Enlightenment philosophers into stringent ‘social mores’. If an overly Evangelical family subjectively considered behaviour by a family member to demonstrate sinfulness, and therefore, ‘Devil’s Work’, (for example, pregnancy on the part of an unmarried teenage daughter), that daughter could be brought before a Magistrate, and if he was of the same opinion as the parents, she could be committed involuntarily to an asylum, sometimes for the remainder of her life as in need of ‘care and protection’. The unfortunate resulting infant, if born in the asylum, was considered a Ward of the State, nominated a ‘foundling’ and either fostered or adopted out. The child could not be claimed legally by the biological family. Records to this effect were read by the writer of this thesis at an asylum in Hertfordshire, England in 1969. Related records also were viewed in England and similar records in NSW 1980. For reasons of confidentiality, more precise referencing was not permitted by either psychiatric hospital. These circumstances are recorded as occurring in USA. as well.

65. Jones has reported that this Act represented a turning away from the legislation of the previous Lunacy Acts; the unquestioned legal view was no longer acceptable. The medical view received more consideration, and the social view was encouraged in the clauses relating to rehabilitation and after care (Edwards, 1978:48). The main innovations were in the provision for voluntary treatment, the establishment of outpatient clinics and observation wards, and an updating of terminology. A small beginning to community care was commenced in Croydon, England in 1930, but did not develop until after 1945 because of the unstable political climate and the primary consideration being given by Parliament to foreign policy over domestic political needs. One can conclude that the beginnings of equality in treatment with general medicine were beginning. The insecurities of the 1930s throughout the Western World, with the threat of impending War, precluded implementation of change. Voluntary treatment consequently did not reach Australia until after World War II.

66. With reference to Rawls whose Theory of Justice (1972) was introduced in Chapter Two, he has shown that the principles of justice are determined by a group of people who decide what they will count as being just or unjust ‘justice as fairness’ (Rawls, 1972:12). We decide what to do behind a ‘veil of ignorance’ about individuals, but we make biased decisions (1972:12). Again, these details were considered in Chapter Two.

67. Throughout this chapter it has been emphasized that the ability of asylumdom to exist for over one hundred and fifty years in each country, was aided by the circumstances of industrial work practices with all members of the family being obliged to work long and unremitting hours in the new factories. This affected

the families as did the Lunacy Laws which consigned the mentally ill to the asylum as the correct environment for them. The isolation from the community of the mostly rural based asylums, together with the belief that the safety of both community and mentally ill individual was being insured, allowed the families to relinquish their hitherto personal responsibilities for their disabled members, until eventually, asylumdom was automatically seen as the most appropriate place for the safekeeping of the mentally ill.

CHAPTER FOUR
CHALLENGES AND CHANGES TO THE CARE OF THE MENTALLY ILL
POST WORLD WAR TWO

Introduction.

The model of asylumdom described in Chapter Three remained in position unchanged and unchallenged for the most part, until the end of World War II, when changes would take place in every continent which would re-shape the fabric of society: its philosophical views, ethics, morality, health practices, education and even such societal units as the family (Charles SJ. 1998:135). These changes will be examined within this chapter, in order to decide whether in a new age of deinstitutionalization, when asylumdom would be mostly dismantled, the mentally ill would now receive social justice, and have their human rights respected.

The end of hostilities in World War I, and the subsequent signing of Peace Treaties at Versailles in 1919, had not brought stability to an unsettled world. The hostile and punitive atmosphere which surrounded the Versailles Treaty had engendered economic, social and political unrest throughout the Western World, and thirty one years later, the unfinished conflict of World War I erupted into World War II which would bring far reaching results in its wake (Robertson, 1999:15-19).

It has been stated by Jonathan Sacks that War is one of the great agents of social change (1997:113). Throughout the period of the Second World War, asylumdom in the Western World remained static, but the social world was changing and would influence mental health care dramatically. In the face of a common enemy, taxation levels had risen, and there was in all the countries of the Western allies a sense of fraternity, and an identifiable common bond of optimism. With memories of the First World War still fresh in the minds of many people, as well as the social deprivations of the Great Depression, there were strong emotions determining that to atone for the loss of the lives of so many, a better and more just Peace would be established by the survivors. It would be a Peace where poverty, disease and ignorance would be addressed, as proposed by the Beveridge Report (London

1945), which paved the way in that country for the welfare reforms of Attlee's government (1945-51). All this implied considerable input of the State in the affairs of the individual.

Sacks believes that the concept underlying this State interference was a political philosophical theory, moving from the established pattern of Enlightenment liberalism described in Chapters Two and Three of this thesis, to welfare liberalism (1997:113-114). It is suggested that this development more appropriately describes the influence of the socialist movement, which had been introduced as 'scientific socialism' by Marx and Hegel in the Marxist "Communist Manifesto" of 1848, (1) and would exist in various less confrontational systems throughout the first half of the twentieth century and into the post World War II years as, for example, Christian Socialism and Social Democracy (Fine, 1984).

Socialism itself cannot be accurately defined: it is at once a movement and a theory, taking different forms under different historical and local conditions (Haslett in Honderich, 1995: 830-831). (2) This policy would be expressed as a concept of human rights, with the governments of Great Britain, USA and Australia in the immediate post World War II years increasing their participation in, and control of, the economy, education, health and welfare (Sacks, 1997:114).

The influence of the human rights movement, the establishment of the United Nations, and the ensuing Declaration of Human Rights which followed closely on the heels of the Second World War, were so important to the future of health care, in this instance mental health care, that Chapter Five will be allocated entirely to an analysis of the Enlightenment concept of human rights as interpreted especially in Australia in relation to mental health care. They will be interpreted in the light of philosophical and social changes occurring at that time especially in Australia, which would affect mental health care. Within Chapter Four, it will be argued that the cataclysmic effects of World War II resulted in the dominance of a mixture of philosophical ideologies which stemmed directly from that conflict, and which it will be shown, later in the chapter, impinged directly on mental health care practices.

For example, in France, which had borne the ignominy of invasion, defeat, and collaboration of the Vichy Government with the totalitarian forces of National Socialism,

much underground resistance had been sustained with great fortitude by French Communists who formed the backbone of the *Maquis*, the Resistance movement which also attracted other patriots of differing political persuasions such as Jean-Paul Sartre, (1905-80) who, already an established philosopher in 1939, fought with the French Army, was captured, imprisoned, released later and attempted to join the Resistance. Sartre had continued his study of Heidegger (3) (who is considered to be one of the founders of existentialism) whilst a Prisoner of War, and continued after the War to exert great influence on the French world particularly, on account of his status as a philosopher propounding existentialism, and as a major playwright, novelist, political theorist and literary critic (Baldwin in Honderich, 1997:791).

Later, Sartre's influence as a philosopher and intellectual would be overtaken by structuralists, such as Levi-Strauss and Althusser, and post-structuralists such as Derrida and Deleuze. The significance of these thinkers will be discussed within this chapter. It will be shown also, that philosophical currents of 1945 may be traced through a line linking Schopenhauer, (4) Kant, Locke, Sartre, Nietzsche and his followers, especially Michel Foucault, Ayer and logical positivism, and pragmatism as described by Dewey, (5) to the different strands of thought including postmodernism, associated with the years 1945 onwards. It will be shown in Chapter Five, that neither the advocates of Enlightenment Utilitarianism, nor those of Postmodernity have succeeded in providing an adequate framework in which to deliver satisfactory mental health care. The way will be paved for a demonstration to be given within that chapter, to show that a model of Natural Law, based on Finnis's theory of Natural Law and Natural Rights and already introduced in Chapter Two, provides a preferable philosophical framework in which to develop Mental Health Policy, and provide mental health care in which social justice and the common good prevail.

Within the structure of change provided in the post World War II world, the social structure of the community would be challenged and mental health care would be revolutionized irrevocably again, as it had been two hundred years earlier, with the best of intentions, and altruistic desires, but sometimes with disastrous result. To effect change competently in mental health care practices, it is important to know, be skilful and to understand mental health as a discipline, from the practical as well as from the theoretical point of view, in order to insure that whatever change is made, is for the benefit of the

client and his/her family. The change must rest on a firm foundation of social justice, to be practised for the common good. Otherwise, good intentions may founder in the sea of multi-philosophical, political, economic and social views prevalent at any one time.

In Chapter One of the thesis, it was stated that lacking financial rewards, mental health did not attract the attention of the academic world to the same extent as, for example, penal reform. It was in danger of attracting a few enthusiastic theoreticians who lacked any practical knowledge or had any concept of the difficulties and problems faced by both health practitioners and their clients (O'Sullivan, 1981: 25). It will be shown that understanding of the underlying philosophical view of social justice was lacking on the part of the theoreticians, and so there was a danger that health care could be manipulated to suit whatever prevailing philosophical theory happened to be in vogue. It could change direction according to the whims of drug houses, economic constraints, scientific theories, social views and public opinion, with concern about the clients not always appearing to have been of primary consideration. It is necessary, therefore, to closely analyze the changes which occurred so rapidly during the the post World War II years to asylumdom in UK, USA, and especially, in relation to this thesis, in Australia, in order to ascertain what was good, what might be prevented in the future, and what urgently is required to be remedied, in order to produce a just and fair system of health care for this vulnerable section of society.

Eric Hoffer, writing in The Temper of our Times has stated:

We used to think that revolutions are the cause of change. Actually, it is the other way round. Change prepares the ground for revolution. (1998:1)

Certainly, during a time of unprecedented change following the Second World War, there were revolutions in pharmacology and medicine. The effects of these challenged the practice of psychiatry, and combined with the various strands of critical thinking, economic and social changes, would topple the world of asylumdom. At times, the concept of mental illness itself would be challenged, and in many cases with apparently ill-conceived haste, Authorities would attempt to transfer the majority of the institutionalized mentally ill to the community sector, appealing to a theory of de-institutionalization/normalization.

In order to analyze this complex situation against a background of changing philosophical viewpoints, the chapter will be developed accordingly:

1. Introduction.
2. Enlightenment influence on Pharmacological and Medical Revolutions affecting mental health care post World War II.
3. The shifts in Philosophical views affecting psychiatry: Postmodernism and the anti psychiatry movement.
4. The resulting shifts in societal outlook: social, political and economic changes affecting mental health care post World War II.
5. The concept of de-institutionalization. How it changed mental health care and why.
6. Conclusion.

2. Enlightenment influence on Pharmacological and Medical Revolutions affecting mental health care post World War II.

Enlightenment confidence in the human beings' use of reason, and confidence in the supremacy of science, seemed at first to continue to be justified in the immediate post World War II world, in relation to health care. There were rapid discoveries in pharmacology during the 1950s which would widely affect medicine and the delivery of health care.

In medicine, the development of Penicillin by Howard Florey of Adelaide, from the mould identified as Penicillin by Andrew Fleming in 1928, brought formerly lethal diseases under control. Of particular interest for the psychiatrists, was its effectiveness against Syphilis. This meant that the chronic state of General Paralysis of the Insane (GPI), which had filled Victorian asylums with incurable patients suffering from the terminal stage: dementia, had the potential to be eliminated as from 1944 (Le Fanu, 1999:60-81).

-Significance of the pharmaceutical revolution on mental health care and medicine.

There were rapid discoveries in pharmacology during the 1950s. In just over ten years, during that decade, four groups of drugs were introduced into psychiatric practice and are the foundation of psychiatric therapy even today (Le Fanu, 1999:60). They are: *chlorpromazine* for schizophrenia, *lithium* for manic depression, *the antidepressants* for depression, and *benzodiazepines* such as valium, for anxiety. The discovery of each drug was totally fortuitous and unrelated to scientific understanding of the underlying mental illness.

In 1952, the first of these drugs, the phenothiazine group, was introduced in the form of chlorpromazine, with dramatic results for clients suffering from any of the forms of schizophrenia. Almost immediately, the traditional 'bedlam' scene of screaming and chaos changed into a clinical scene of clients communicating with staff and with each other in quiet ways (Shorter, 1997:255). It was the phenothiazines which permitted the custodial asylum image to be laid to rest, which unlocked asylum doors and which made it possible to realise Caplan's theories of community centred therapy (Caplan, London: 255-8). That is, therapy given in the client's own home, with the psychiatric hospital only being used for acute crisis care and for short periods of therapy.

The introduction of the phenothiazines into the psychiatric world was not aimed scientifically at mental illness *per se*. The use of these drugs initially, as has been stated, was fortuitous, but the resulting and increasing influence of the chemist, and especially the related drug companies, would escalate with startling effect (Shorter, 1997: 249-250). The introduction of the phenothiazines would have a twofold influence on mental illness. Firstly, the introduction of chlorpromazine, a member of the phenothiazine family, would be the first drug ever to prove effective against the symptoms of certain mental illnesses, such as the schizophrenias (Shorter, 1997:254). Secondly, was the startling involvement of drug companies whose influence, indirect and unintentional at the outset, would eventually challenge the authority of psychiatry and direct the routes by which psychiatrists and patients alike would give and receive health care (Shorter, 1997:249-250). It was the beginning of an involvement which, before the 1950s, would have been inconceivable: the concept of health care as an industry, with accountants guiding the fate of hospitals and health systems, and drug companies proliferating as big business. The history of the first of the phenothiazine drugs used in psychiatric care is, therefore, of profound historical, economic, sociological and professional significance, so startling were its consequences. (6)

The drug, commonly known as Largactil, swept through French psychiatric centres, and in UK was reported by Rollin, an English psychiatrist working at the 3,000 bedded asylum at Epsom as having:

"Torn through the civilised world like a whirlwind and engulfed the whole treatment spectrum of psychiatric disorders." (In The Journal of Psychopharmacology 1990: 4, 113, 109-114)

In North America, although clinicians brought it to that continent, chlorpromazine owed its promotion and acceptance to the drug companies. (7) Once the drug companies had

convinced the Canadian medical authorities of the benefits of their drug, they had now to convince the USA market, one not easily persuaded because of the reported dominance of psychoanalysis (Shorter, 1997: 253). The timing was fortuitous, in that Freudian psychoanalysis was being successfully challenged in North America by cognitive therapy. Freudianism had located the source of mental illness in conflicts, which Freud believed had occurred in early childhood. Such a location was surely irrational, in that such conflicts were inaccessible to human reason. Freudianism had asserted that psychoanalysis was a 'science of the mind'. (8) It was now exposed as a 'veneer of rationalism.' (Eysenck, 1985)

Cognitive therapy in contrast, could be completed successfully within weeks instead of years, and permitted patients to make sense of and control their psychological problems. Furthermore, it has been shown to work for generalized anxiety disorders, for example, obsessive-compulsive disorder, agoraphobia and depression (Andrews in The British Medical Journal, 1996, Vol.313, pp. 1501-2). (9)

Again, it was the strategies employed by the drug companies in the market of surgical potentiators and their dogged persistence later with psychiatrists as they saw a potential psychiatric market opening up, that met the challenge and wore down resistance. The company, Smith Kline and French, was a small and insignificant producer of patent medicines at that time. With a new and ambitious president named Boyer, the company hoped to upgrade to prescription medicines. With this in mind, Boyer travelled to France and signed a licensing agreement with Rhone-Poulenc, unaware of the psychiatric uses of chlorpromazine but aware of its use as a potentiator. (10) Boyer believed he had purchased an anti-emetic. At the same time, Boyer could hardly have been present in Paris and not heard the exciting news of the effects of chlorpromazine on schizophrenia. Lacking a research budget, Boyer thought to market the drug and see what would happen. Outside psychiatrists were cajoled into utilizing the drug, and reported in September 1953, that they believed the drug to be capable of influencing psychiatric illness. Their report was published in The New England Journal of Medicine (October 21, 1954:689-692). This move ensured the acceptance of chlorpromazine in academic medical circles, but now the state asylum system had to be addressed. For this, Smith Kline formed a special chlorpromazine task force, and systematically combed the state asylum system. Reluctance on the part of any administrators to trial chlorpromazine was reported to be countered by

the task force who promoted the money-saving aspects of the drug (Shorter 1997: 254).
(11)

Australia still followed very closely the influences from UK. Many of its psychiatrists were educated overseas, and most still gravitated to London to continue postgraduate studies. The arrival of chlorpromazine in Australia, corresponded with the accounts given for London and Paris. Psychoanalysis had never demonstrated the hold on psychiatry in either UK or Australia that it had shown in USA. (12) There was, therefore, much less prejudice to wear down in the Commonwealth countries such as Australia, compared with USA.

During the 1950s, it may be safely claimed, the pharmacological revolution was introduced to psychiatry as a result of chlorpromazine, and firmly established a new way of viewing and treating psychosis. It also firmly established the influence and authority of drug companies who would undertake the necessary research, preliminary tests, and then market a whole *smorgasbord* of neuroleptic drugs in the future. The pharmacological revolution also seemed to vindicate the Enlightenment view that the human condition could always be improved. The mentally ill, still suffering from the underlying illness of schizophrenia, looked normal, and could communicate rationally; therefore they could be treated in identical manner to those who were not mentally ill, and society could expect them to behave like 'normal' people, as part of the workforce. However, many of them had been separated by asylumdom from normal relations with the community for several years. They were unfamiliar with everyday life, and had to learn how to communicate with others, as well as learning daily living skills. They required understanding awareness of their condition in order to rehabilitate them. This was not always recognized by bureaucracy, professionals or society.

As already stated, in the post World War II years, three other types of drugs would be developed and would revolutionise the treatment for prevailing psychiatric conditions: *Lithium Carbonate*, the *anti-depressants* and the *benzodiazopines* (for example *valium*) for anxiety (p.180). There seemed to be no limit to the potential of science to overcome physical and mental illness.

In the scientific use of drug therapy, psychiatry would use the medical model. By definition, 'medical model' in this context, is the symbolic representation of the

interrelations exhibited by a phenomenon within a system or process. **(13)** The model is presented as a conceptual framework or theory that explains a phenomenon and allows predictions to be made about a patient or a process (Mosby, 1990:735). The medical model may be said to have been the most consistently used by psychiatrists in describing the relationship of medicine to the use of drug therapy. It demonstrates also the involvement of science in considering the causes of psychiatric illness. The use of the medical model as indicated leads to diagnosis, prescription and implementation of therapy, all linked to a preferred drug protocol.

In psychiatric practice, however, there is a paradox; although it is alleged that the medical model is used, in fact the medical process cannot proceed in the normal methodical manner, and the unsuspecting onlooker would be mistaken in believing that the scientific method is in any way related to the discovery of post War psychiatric drug therapy. The scientific process is indeed used by the chemist in producing chlorpromazine, and the medical model is used by the psychiatrist in collecting data from the patient, (for example in observing behaviour and mood changes) forming a hypothesis and deciding on the evidence, to treat the patient as suffering from a specific psychiatric illness, but it is impossible to tie together the scientific constituents of the drug with the brain constituency of the patient. They bear no relationship to each other.

For example, it is known that chlorpromazine blocks the activity of the neurotransmitter, dopamine, so that one might deduce that those suffering from schizophrenia must have an excess of dopamine in the brain. However, even the most sophisticated scientific research has been unable to demonstrate this: the dopamine systems of the brains of schizophrenics appear to be normal. Again, Le Fanu has summarized the current psychiatric knowledge in this way:

We know that a handful of drugs discovered by accident almost fifty years ago are effective in relieving the symptoms of schizophrenia and depression, but why they work, the nature of abnormal changes in the brain they correct, and especially the causes of psychiatric illness remain a mystery. (2000: 61)

The effect of the drug discoveries was to encourage the community to consider the ability of the psychiatrist to diagnose and treat psychiatric conditions in the same light as they considered other specialists in the medical profession, and to put implicit trust in his/her diagnosis and treatment. **(14)** Psychiatrists would now claim a scientific basis to their discipline, and could demonstrate the efficacy of neuroleptic drug therapy.

-Challenges to psychiatry's claim to be scientifically based.

Because chloramphenicol will modify the symptoms of the schizophrenias, it does not imply that the diagnosis itself has been correct, because the causative factors are often unknown. It is suggested that using the medical model for diagnostic purposes, makes the diagnoses arbitrary and intuitive. They are not the result of measurable evidence, and consequently, not based on as sound a scientific structure as psychiatrists would believe. Because mental disorder is deemed to be an 'illness,' currently, the decision whether a patient is rational and 'competent' or 'irrational' and 'dangerous', rests with the medical practitioners. Relying on the medical model, the diagnoses depend considerably on the psychiatrist's experience as much as on evidence. (15)

For the psychiatrist entering the psychiatric world of change, diagnosis could prove a dilemma during the 1950s and 1960s. O.V. Briscoe undertook a study in 1968 of one hundred patients who entered Rozelle, the Callen Park (Sydney) admission centre. Of ninety one doctors who referred patients, only four had attempted a formal psychiatric diagnosis. Most are reported as having described behaviour only. In Dr. Briscoe's opinion, only thirty-four of the one hundred patients suffered from mental illness 'in the usually accepted meaning of the term.' The patients included eight patients in the terminal stages of physical illness who presented as management problems. The conclusion reached was that medical interpretation of mental illness was wide, and that those whose behaviour could not be controlled at home were most likely to be scheduled and sent to a psychiatric hospital (in The Australian Law Journal, 1968, 42:207ff). (16)

Lucas accepted the problems of having an adequate definition at that time, and stated that prediction is an inaccurate and unscientific process but, nevertheless, emphasized that:

"Many psychiatrists would assert that there are useful clinical guidelines for the assessment of suicide potential and in some cases homicidal potential." (Paper delivered at Sydney University, 1977)

It would appear then, at a time when drug therapy was being introduced, that indeed intuition (17) based on medical experience was still being used to interpret legal concepts such as 'safety' within a medical framework and often to make a diagnosis. If a diagnostic error was made, it might well have been compounded by basing ensuing therapy upon that diagnosis. For example, if a patient was diagnosed as not dangerous, and as suitable for treatment in a community setting, only to find that the patient harmed a member of the community, but was not responsible for his/her acts, would have violated the human rights

of the community. An analysis of this situation could invoke criticism from lawyers who argue that society has a right to be protected from harm and from those who may be harmful. It is, furthermore, extremely difficult without careful monitoring of the patient within the community setting, to ensure that drug therapy is being administered and continued by the patient, especially if the individual is living alone or with those who do not understand the significance of the drug for continuing health, and when community health infra-structure may be almost non-existent. The ability to diagnose mental illness correctly, was still posing a challenge to psychiatry in the 1950s, and still does today.

-Side Effects to Drug Use: A challenge to their efficacy.

The euphoria surrounding the new drug therapy would be short lived. In the future, side effects would manifest themselves. Patients receiving chlorpromazine would be observed walking with peculiarly stiff gait, and with mask-like faces, similar to Parkinsonism - only drug induced Parkinsonism was unknown at that time. These side effects would be called 'extrapyramidal symptoms' because of their obvious effect on voluntary muscle; later, the term employed would be 'tardive dyskinesia' (Shorter, 1997:314-324). What was seen as a possible side effect of minor consequence in 1953, would become a massive problem as de-institutionalization took effect in the 1970s and later, when patients, in order to avoid the side effects would stop taking their drugs on release from hospital with disastrous psychiatric and social effects.

-The entrenchment of the drug industry to the control of mental health care: a challenge to the authority of psychiatry.

There was a further problem for the psychiatrist during the changes taking place in the psychoactive drug scene; although s/he might believe psychiatry to be in control, the actual controllers were the drug and ancillary companies, whose financial and controlling influence in medicine became overwhelming (Shorter, 1997:319). Companies competed with each other for a share of the lucrative psychiatric market, and general physicians, who are the first contact for most psychiatric patients as well as psychiatrists, were bombarded with propaganda advertising drug products (Breggin, 1993:425-432). The introduction of the neuroleptic drugs owed nothing to serendipity. The driving force would be pharmaceutical executives and scientists. In the decades following the introduction of chlorpromazine, the race to discover new drugs would be dominated by the great pharmaceutical houses (Shorter, 1997:265).

Psychiatrists urging moderation in the use of drug therapy.

There were members of the psychiatric discipline, however, who rose to the challenge of drug companies monopolizing of psychiatry and mental illness, and who attempted to steer a middle course by urging caution in the use of drug therapy. (18) Taylor suggested that the response to underlying social, economic and environmental problems had been for the doctor to:

“label these problems as ‘diseases’ and then take them over for ‘individualized and psychological therapy.’” (1979:224)

By ‘medicalizing’ these situations, Taylor maintained like Bandura before him, that the medical profession was deflecting attention away from root causes of illness (1979:225). Bandura *et al*, have queried the medical ethics of drug therapy emphasis, claiming that the automatic treatment of symptoms with a suitable drug does not change the cause of an illness, which may be social in origin (1969:16). (19)

Instancing the popularity in the use of tranquillisers and other psychoactive drugs in the industrialized world when they burst upon the pharmaceutical scene, Taylor has cited the following statistics. In UK in 1973, psychoactive drugs headed the list as the most common group of drugs prescribed (1979:225). In USA, Valium (Diazepam) prescriptions at that time were climbing at the rate of seven million annually (Taylor, 1979:225). Taylor *et al* have claimed that:

“Most of the increased use of tranquillisers and anti-depressants has been for the ‘treatment’ of neurotic symptoms and mood changes resulting from various interpersonal and situational problems.” (1979:225) (20)

Peter Breggin, a psychiatrist who has devoted the majority of his professional life to attempting to stem the enthusiasm for drug therapy in psychiatry, has written of his concerns that some psychiatrists are in danger of, unconsciously, practising double standards (1993:504-507). As paid scientific investigators for large drug companies, they have been known to produce biased or skewed reports, which eulogise their own company’s product either to the detriment of another’s, or else by totally ignoring other products (Breggin, 1993:504-507). None of these psychiatric critics has been so antagonistic as true members of the anti-psychiatry school. They do not condemn psychiatry, but urge caution and objectivity in professional undertakings (Breggin 1993: 504-507).

The significance of the invasion of the drug industry into mental health care management cannot be over-emphasized. It was part of the shift in mental health care within an altered socio-economic climate in Australia, UK, and USA, and was influenced by the desire, following World War II for ‘freedom, liberty and equality.’ One is obliged to ask ‘freedom to do what? What is the particular form of equality that is desired?’ The demands reflect the Enlightenment concepts in vogue during the eighteenth century revolutions, which were discussed in Chapter Three, and are made manifest again in the belief of:

“...equality before the law and freedom to express oneself without social constraint provided no-one is injured in the process.” (Buchanan,1979:109)

This time, however, as well as reiterating Enlightenment aspirations, philosophical revolution would burst forth as post Nietzschean aspiration for freedom. As a principle of justice, in such an atmosphere, it seemed unthinkable to many academics and concerned members of the community, to deprive a human being of his/her freedom, when drug therapy had resolved behaviour problems originating in a psychiatric illness, and allowing the individual to behave in a ‘normal’ way. There was then a strong move among many members of the community to ‘normalize’ psychiatric care by de-institutionalization in Australia, from the 1970s onwards. The change in attitude especially among young academics, was assisted by the shift in philosophical thinking.

3.The shifts in Philosophical views affecting psychiatry: Postmodernism and the anti-psychiatry movement.

The Great War of 1914-18 had led to the disintegration of stability throughout the Western World, with mass unemployment, the Great Depression, the rise of totalitarianism, and further bloodshed and social chaos. With the influence of genealogists of the Nietzsche school, existentialists such as Sartre and other members of the French philosophical school of thought together with logical positivists such as Alfred Jules Ayer (1910-89), the ground was well prepared for the introduction of the postmodernist turn. (21) The term ‘postmodernist turn’ suggests a turning away from previous views.

Postmodernism as a philosophical view was introduced and discussed briefly in Chapter Two (pp.53-54). Essentially, it is anti-foundational; it does not dispute the validity of discourse, but disputes the idea that there are indisputable epistemic foundations for discourse. and builds on the work of the philosopher Nietzsche, who has been a major

influence on prevailing philosophical views post World War II. Postmodernism does not hold with the Enlightenment view that there is one way of finding truth; postmodernism is synonymous with pluralism (Norris in Honderich, 1995: 708). (22)

The psychiatrist confronting the problems of mental illness and mental health care post World War II was him/herself a different professional to his/her pre-Second World War counterpart. S/he had received a much wider medical education than any predecessors, because of the changes to medicine itself, and as has been shown above, s/he was going to confront a vast range of definitive treatments for the mentally ill patients.

The asylum itself, however, had not changed. A self-contained sub-culture, often located at a distance from the nearest towns, it had continued to exist, on a modicum of financial assistance, with its own psychiatrists and psychiatric nurses, who, despite improvements in education and social conditions, remained separated from the general medical and nursing milieu, and because of the geographical and social isolation of their workplace, were also isolated generally from the mainstream of society. In each of the three countries under consideration, many psychiatrists and nurses resided in houses provided for them on the asylum properties (Carpenter M. Essay No.6 in Re-Writing Nursing History. 1980:134).

A survey of the archives of some of the psychiatric hospitals in NSW, has shown the same injustices in relation to mental health care in Australia Post Second World War, as has been described in the years preceding the War. When the post war psychiatrists entered the asylum for the first time in 1946, however, Nathan has described how they witnessed with incredulity and horror, the sub-culture of the asylum-an anachronism from the nineteenth century existing in the middle of a changing twentieth century medical, therapeutic world (1980: 218-219,80). Their reaction to this situation resulted in, for example, a Royal Commission in NSW appointed to enquire into certain matters affecting Callan Park Mental Hospital (*Report of the Royal Commission to enquire into certain matters affecting Callan Park Mental Hospital*, 1961).

The Royal Commission was initiated as the result of an official report made by the Medical Superintendent of Callan Park, who alleged and demonstrated amply by his examples, cruelty, indifference, lack of dignity and infringement of human rights towards the patients by staff and relatives, and indirectly by the community through its indifference and

unconcern. The Commissioner appointed, the Honourable Mr. Justice McClemens, in finding many of the allegations true, remarked that they were representative of:

“...asylum problems which exist(ed) all over Australia, and indeed (were) world-wide.”

(Report of the Royal Commission to enquire into certain matters affecting Callan Park Mental Hospital, 1961) (23)

-Psychiatry and the challenge of medical ethics,

Psychiatrists returning to civilian life after World War II had been trained in modern medicine using empirical research methodology. Now, more than ever, especially in the field of pharmacology, doctors and chemists would rely considerably on experimentation and research, and would be conscious of the ethical implications of such practices. During the Nuremberg trial in 1946 of physicians who had co-operated with the Nazi government in experimentation on political prisoners, it was made manifest that the victims of racial discrimination, and/or mental illness, as well as the disabled, had been used ruthlessly for experimentation purposes (Haring B. 1972:209). The outcome was the development of a Nuremberg Code, outlining the guidelines for “Permissible Medical Experimentation” (Haring B. 1972:209). This was extremely stringent in its codification, and in the post war years, the medical profession continued to work toward a mature resolution of the research problem. The outcome was *The Declaration of Helsinki: Recommendations Guiding Doctors in Clinical Research* (in Haring B. 1972 : 209-212). The Declaration was accepted to serve as a guide for the entire medical world at the Eighteenth World Medical Assembly in June 1964, by the World Medical Association (Haring B. 1972:209). The basic principles included the following that are relevant particularly to mental health care and social justice:

- Clinical research must conform to the moral and scientific principles that justify medical research.
- Clinical research should only be conducted by scientifically qualified persons...under the supervision of a qualified medical man (sic).
- Special caution should be exercised by the doctor in performing clinical research in which the personality of the subject is likely to be altered by drugs or experimental procedure.
- Clinical research cannot be undertaken (on the patient) without his free consent after he has been informed; if he is legally incompetent, the consent of the legal guardian should be procured. The investigator must respect the right of each individual to safeguard his personal integrity, especially if the subject is in a dependent relationship to the investigator.

(Haring B. 1972:209-212) (24)

The medical profession then, was conscious of the complex world members were facing in the post World War II World, and preparing to rise to the challenges that would ensue.

It is suggested that the medical profession itself, however, may have been unwise in its desire to be seen primarily as a 'scientific profession'. Surely, psychiatry is, above all medical disciplines, an art as well as a science. Dr James Le Fanu has observed:

"The skills in healing...are not merely technical but imbued with the insights of humanist philosophy." (In The Tablet, London, 2000, 15 Jan: 4597)

Further, Le Fanu has demonstrated that :

"Examples of evidence-based observation based on 'meta analysis' are often synonymous with unreliable knowledge. The most scientific thing that doctors do in terms of reliable, predictive knowledge, comes from talking with their patients." (In The Tablet, London, 2000, 15 Jan: 4597) (25)

Bloch and Singh have stated that the psychiatric interview, which forms part of the mental and physical examination, is one that requires tact, sensitivity, and compassion. It needs to be unhurried and supportive (1997:22-23).

"Part of their (the psychiatrists') mission is to make patients feel good while helping them to feel better". (Shorter, 1997:272) (26)

Shorter has suggested, like Fanu, that in the efforts by psychiatry to identify its role with science, it lost sight of the fact that the psychiatrist is not basically a scientist, but a clinician. This point will be revisited in Chapter Five, when evidence given by clients and carers to the Burdekin Inquiry will be used to reinforce this statement. (27)

The challenge of anti-depressants for psychiatric practice.

With drugs being promoted in both general and psychiatric medicine by drug firms, and in the face of increasing anxiety in the modern world, a subtle change was coming over many of the psychiatrists and members of the community. The arrival of, for example, anti-depressants such as Prozac to counteract not only stress but weight problems, increased the pressure of consultations on doctors, and may have added to their inability to find time always to interview the psychotic patient as sensitively as they may have wished and needed to. Shorter *et al* have claimed that psychiatrists had trained to treat major psychosis, but many were lured into the lucrative field of treating psychoneurosis (Shorter, 1997:295). Patients/clients/consumers some of whom suffered from minor psychosis such as depression, and some who were seeking a personality-disorder-free life but were not truly depressed, were now conscious of drug therapy, and actively seeking it out in an atmosphere of socio-economic and political change (Shorter, 1997: 295).

In the complex post war world of medicine, the health team had expanded to include professionals such as Social Workers, Psychologists and Counsellors, all of whom attended to specific aspects of psychotherapy. There were now several professional groups all answering the various needs of the psychiatric patient, but not necessarily educated specifically or adequately, professionally and emotionally, for this specialty. All of these members of the health team had received a University first degree-often with a few units in psychology or sociology. Within such a degree, they had been introduced, briefly, to the current philosophical views of Nietzsche, Sartre and especially, Foucault. These philosophers were referred to in Chapter Two (pp.53-57, fns 66-67) and Foucault's views will be further considered later in this chapter. **(28)** Together with these individual philosophers' commendable assertions that one must not use religion as a crutch or as an excuse to shore up social mores which had become mere conventions of behaviour, students had accepted the belief that all human beings had the right to make 'choices' over any aspect of their lifestyles.

The enthusiastic young professionals, however, had received theoretical education but not experienced practical application of their views, so that the praxis resulting from the combination of theory and relevant practice was often missing. **(29)** Many were launched into psychiatric practice with no concept of the behavioural difficulties or threatening situations they might meet. Not linking 'rights' with 'responsibility' in their premise, psychiatrists were often unaware that their clients were unable to make informed choice, because the latter were unable to grasp the concept of responsibility. The argument concerning 'informed choice' was discussed at length in Chapter Two (p29, **fn.5**). This situation led to hostility towards the professionals often on the part of the carers, who had to cope with the confused clients, and also with the nurses, who knew their clients' limitations, but whose own sparse professional education limited their ability to argue cogently against other professionals' decisions. **(30)** There will be a return to this problem in Chapter Five.

Many psychiatrists went down the lucrative road of treating minor neuroses in the community, rather than turning their attention to the main psychoses (Shorter, 1997:295). Breggin has asserted, that this was for reasons of economic self interest (1991:426-432). Such behaviour brought psychiatrists a degree of disrepute, as they jostled with nonmedical therapists for business. Shorter has suggested that this was another justification in the eyes

of psychiatry's antagonists for scorning psychiatry as a profession. It was, said Shorter, the mastery of the neurosciences that distinguished psychiatry from its competitors (Shorter, 1997:295). By removing so many qualified practitioners from the major psychotic field, those with severe psychotic conditions were left short of necessary doctors to treat them. The significance of this fact will be brought out in Chapter Five, in analyzing evidence given to the Burdekin investigation into the Human Rights of the mentally ill in Australia (1993).

-Revolutions in health care affecting nursing practice and mental health nursing care.

Nursing itself plays a crucial role in psychiatric health care, both acute, hospital-oriented and also community centred. Throughout the asylumdom period and into the present day, the nurse has been at the 'coal face', caring for, communicating with, teaching and encouraging the rehabilitation of his/her patients/clients and their carers.

In both general and psychiatric nursing, the drug revolution would bring a conceptual re-shaping of nursing theory and practice and heightened the implementation of Dewey's pragmatism in nurse education. The introduction of the 'nursing process', a systematic use of the scientific method in order to hypothesize, collect data, implement treatment and re-hypothesize, led to a scientific approach in nursing methodology and treatment. In general nursing, the nurse's role would change dramatically, with patients requiring brief stays in hospital, rapid return to independence, and recovery in the community sector.

Within the asylum, nurses who had played a custodial role for one hundred and fifty years, now found themselves coping with a world of pharmacology and change for which they were ill prepared. There were expectations from the health industry that they would be involved with psychotherapy, which at that time was outside their curriculum parameters. Nor were they prepared for a role in the community, which was where their skills would be needed and most of their clients would be living. In 1983, after several years of nursing advocacy, and the establishment of 'undergraduate pilot courses' in the then Colleges of Advanced Education (CAEs) in several States, the NSW Premier, acting on the advice of his Nurse Advisor, and in the face of severe economic embarrassment healthwise, accepted her recommendation to move undergraduate nursing into the CAEs. NSW acting unilaterally, effected the transition immediately, completing the transfer by 1986. (31) Politically and educationally, psychiatric nursing was being prepared for change. How

satisfactory or otherwise this is proving to be for client care and for the promotion of social justice, will be discussed within the contents of Chapter Five.

-The Anti-Psychiatry Movement: a challenge to psychiatry and to mental health care.

Postmodernism disagreed with the Enlightenment views concerning the nature of truth and the role of reason in the quest for knowledge. Postmodernism as a movement rejects authoritarianism (Sim,1998:3). This topic was introduced in Chapter Two, (pp.53-54) as a preparation for its discussion within the contents of the current chapter. Drawing extensively on the iconoclastic theories of the nineteenth century philosopher Nietzsche, postmodernists echoed his call for a re-evaluation of all values (Sim,1998:3). The movement embraces discourses not only of postmodernists such as Lyotard, but also of deconstruction and poststructuralism (See Chapter Two Fn 65). The confused and often bewildered standards of morality following World War II, provided an ideal environment into which to sow the seeds of negativity which thrived in the scepticism of postmodernism.

(32)

By the 1960s, followers of the active politically Left wing believed psychiatry itself was being used as a means of social control and power over the disempowered. A small number of intellectuals in particular, identified themselves with the anti-psychiatry movement, which became manifest as a movement against the advance of science within psychiatry itself (Shorter, 1997:274). The thrust of their argument was that there is no such medical concept as 'mental illness'. It had been conceived and developed by social, political and legal forces (Shorter, 1997:274). In Chapter Three it was stated that in its inception, Freidson had asserted that the diagnosis of 'mental illness' was professionally legitimized in the eyes of the community according to whether the psychiatrist deemed it to be so or not (1970: 21-22). (See **fn 41** of that chapter which relates this argument to the ideological clash between various health professionals over the interpretation of 'mental illness' and the significance of this interpretation for subsequent therapy).

Anti-psychiatrists asserted that psychiatric illness had been constructed by society, and was, therefore, a myth. With regard to the legitimization of 'mental illness' through its diagnosis by psychiatrists, the influence of the deconstructionist Jacques Derrida (1930-) may be seen here. **(33)** Anti-psychiatrists asserted that if psychiatric illness was a construct of society in order to establish power and control over the marginalized 'misfit', then it

must be deconstructed by society, so as to liberate deviants and creative people from the stigma of being 'pathological' (Szasz, 1970: xiii). (34)

One of the deconstructionalists who would greatly influence the anti-psychiatry school was Michel Foucault, who was introduced in Chapter Two, (pp.54-55) as one of the most prominent post Nietzschean thinkers following World War II. Foucault's influence and his effect upon subsequent deinstitutionalization were of enormous significance. An enemy of Enlightenment theory, Foucault argued in several books, the first of which was Madness and Civilization, (1960) that the concept of mental illness was a social and cultural invention of the eighteenth century. In this book, Foucault offered an archaeology of how the exchange between madness and reason was silenced. In his theoretical manual The Archaeology of Knowledge, (1969) Foucault re-defined archaeology as the set of discourses that constitute 'the archive.' Foucault ultimately came to recognize that what interested him about power was how it produced the subject. The History of Sexuality (1976) was designed to present a genealogy of the desiring subject, conceived on the model of Nietzsche's Genealogy of Morals (Bernasconi in Honderich, 1997:289). Nietzsche through his philosophical works tries to undermine what he believed to be the foundational pretensions of truth in Enlightenment theories, and it seems that it was this element in Nietzsche's works which inspired Foucault. In turn, Foucault influenced members of the anti-psychiatry school.

In 1960, one of the earliest of the anti-psychiatry followers, Ronald D. Laing, a psychiatrist from Glasgow who trained in psychoanalysis at the Tavistock Clinic, London, the home of Freudian psycho-analysis in UK, rebelled against analysis and wrote The Divided Self (London, 1960). (35) In 1967, Laing translated and published a review of an abridged edition of Foucault's Madness and Civilization in the New Statesman, a progressive London journal with a large following of intellectuals. From this moment, Foucault was reported as becoming the leader of the anti-psychiatric movement.

The sociologist, Erving Goffman published Asylums as a result of receiving a fellowship in 1955-56 from the National Institute of Health, for whom he had undertaken fieldwork at St. Elizabeth's, an institution that had, at that period, over 6,000 patients. Goffman wrote that the asylum was a 'closed system that infantilized patients and restricted their lives'. (1961:121-155) He believed that there was no justification for so confining a patient with a

psychiatric illness. The underlying assumption was that there was in fact, no such thing as mental illness; it was just another attempt by a powerful clique (psychiatrists) to seize and maintain power while disempowering a deviant group of society.

Although it is now a dated work, Goffman's Asylums described classically, the 'career' of a mentally ill patient during the 1950s as a process of alienation, in which the patient was removed from the normal society in which his/her behaviour had become unacceptable, to a psychiatric illness environment, either by voluntary or involuntary committal (1961:121-155). Goffman criticized the standards of all admissions, making the significant point that there were no objective and universally acceptable standards for admission to psychiatric hospitals (1961:121-155). This claim was substantiated by a well-publicized study of voluntary admission procedures conducted by David Rosenhan (in Science:1973,179:250-258). (36)

Goffman concluded that whether the deviant was launched upon a career as a mental patient depended very much upon contingencies such as visibility of the offence, the socio-economic status of the patient, the availability of treatment, the convenience of authorities and the opinion of judges in criminal proceedings (1961:121-155). Becoming a psychiatric patient could be a highly arbitrary process, whatever his/her legal status might be.

In 1966, Thomas Scheff, at the University of California, determined that the real problem in 'mental illness' was 'labelling'. He wrote:

"Most chronic mental illness is at least in part a social role. The societal reaction is usually the most important determinant of entry into that role." (Shorter, 1997:276)

In other words, mental illness was nothing more nor less than deviance. By the end of the 1960s, the antipsychiatric interpretation of 'psychiatric illness' had gained acceptance among many intellectuals and academics throughout Europe and North America. A consensus had been formed by them that the:

"Discipline of psychiatry was an illegitimate form of social control and that psychiatrists' power to lock people up must be abolished with the abolition of institutionalized psychiatric care." (Shorter, 1997:277)

Of the Scheff approach, a St. Louis psychiatrist, Samuel Guze, remarked that;

"Nearly all of us who spend our lives working with psychiatric patients ...consider the 'labelling theory' ludicrous." (1992:14)

Others who were less than convinced by intellectual theorists who had little practical experience of the realities of psychiatric illness, included patients themselves. Joanne Greenberg, for example, author of I Never Promised You A Rose Garden had suffered a mental illness. She disliked Ken Kesey's book from which the influential antipsychiatric film One Flew Over the Cuckoo's Nest was made, and wrote:

"Creativity and mental illness are opposites, not complements. It's a confusion of mental illness with creativity...Craziness is the opposite (of imagination); it is a fort that's a prison." (In Psychoanalysis and Psychosis, 1989:513-531; 527-528)

There was then in the anti-psychiatry movement, not only a challenge to psychiatry, but also to the reality of madness as a mental illness. If insanity was a myth, then asylumdom itself must be challenged. It was inconceivable to take away a person's liberty if that individual was a deviant but not ill (Szasz, New York, 1974:xiii). These challenges to mental health care were thrown down in the midst of huge socio-economic change, that together with the drug revolution and the shift in views on psychiatry, would bring about a revolution in the concept of mental health care.

The anti-psychiatry movement gradually faded into the background, and ceased to be of paramount importance during the 1980s. Perhaps one of its benefits, like the genealogist philosophy itself, was to make psychiatrists and health professionals generally, take a scrupulously honest and critical look at the concept of mental illness, and analyze their relationship with the mentally ill. It caused psychiatrists to focus clearly on their aims and objectives, and consider how best to promote mental health (Shorter, 1997:326-327). Although the words were not formulated, the need for the mentally ill to be 'free' and liberated from the asylum, implied the need for *justice* and *social justice* to be involved in their lives. (37)

4. The resulting shifts in societal outlook: social, political and economic changes affecting mental health care.

-Social Change.

The environment for change had been prepared philosophically by the post war promotion of Nietzsche to the position of a major philosopher, supported especially by the thinking of Marx, Foucault and Sartre (Sacks, 1997: 121). The disillusionment in the West with the continuous threat of the 'Cold War', the ideological wars of Korea and Vietnam, all

combined to cause a destabilization of society, and were factors in the academic world especially, rejecting the Enlightenment view of philosophy, and promoting secular humanism, postmodernism and relativism in which former value systems were to be set aside, and it was believed, human beings would be free (Sacks, 1997:120-122). (38)

It is believed that there was within this movement, a genuine desire to assist the mentally ill to reach parity of esteem in health care, and there were undefined beliefs in a vague and unstructured social justice which appeared to be translated as 'not intentionally doing harm to anyone' (Charles, 1998:191). The whole social climate of the 1960s in which everyone's wishes were entitled to be accepted, provided they did not interfere with the wishes of others, fostered hostility toward authority: medical, political and social, (Charles, 1998:194), and appeared to ignore the perceived success of psychiatry.

-The Significance of the Feminist Movement for the Shift in the view of Mental Health Care.

In a bizarre set of circumstances, chemists of the pharmacological revolution as well as postmodernists, found themselves joining forces to promote the Women's Liberation Movement, later to be known as Feminism, not only because of the left wing political movements, but also because of the discovery of 'The Pill' in 1961. (39) This discovery was to have enormous implications for society especially throughout the Western world. For the first time in history, woman was able by chemical means to control her own reproduction. The use or otherwise of 'the Pill', would repercuss in psychiatric health care in, for example, the counselling that might be given to clients suffering from chronic major psychotic conditions, and it would bring the morality of such usage into confrontation with the Catholic Church, a situation which has not been satisfactorily settled even after forty years. (40)

Feminism which lies at the heart of the Women's Liberation Movement, is essentially a social and political force, aimed at changing existing power relations between women and men (Thornham in Sim, 1998:41). In the words of one of the earliest feminists, Maggie Humm:

"The emergence of feminist ideas and feminist policies depends on the understanding that, in all Societies which divide the sexes into different cultural, economic, or political spheres, women are less valued than men." (Feminism: A Reader, 1992 in Sim, 1998: 41) (41)

The influence of the feminist movement on health care in the last half of the twentieth century cannot be overemphasized. Because so many members of various parts of the health team, in both general and psychiatric health include a majority of women, the women's movement has influenced the way in which many women members view political, social, medical and psychiatric theories (Sim, 1998:43). Viewing the male dominance in politics, medicine and psychiatry as 'paternalism' many of them believe that in order to effect change, they need to acquire power so as to dominate the health care scene. The social workers, therapists and nurses, have seen themselves as becoming much more aggressive, pragmatic and assertive individuals, who would be willing to act as advocates for the human rights of the client when necessary (Speedy, 1999:72). The changed perception of the professional woman and the implications of this change for social justice will be related to the findings of the Burdekin Report in Chapter Five.

The prevailing views of postmodernism, together with an upsurge in feminism and the perceived decline in influence of organized religion in the West, destabilized the moral belief in the sanctity of the family. The traditional roles of the father as head and protector of the family, with the equal partnership of his wife as family co-ordinator and carer, were seen by many feminists as paternalistic, and oppressive to the woman, who they viewed as being obliged to hold a secondary role (Sacks, 1997:114-116).

For many members of society, embracing this opinion was not a difficult step to undertake. Many of the social mores had become mere social conventions. Enlightenment theory, Sacks has argued, eroded the moral legitimacy of the family by increasing centralized government and encouraging State intervention (Sacks, 1997:90). While John Finnis, has described the family as the unit in which the value system of Natural Law is practised and the common good is upheld, Marx and Engels have described the family as an institution of capitalism and bourgeois exploitation (Sacks 1997:90). To the post Freudians, the family was a matrix of repression, and psychic dysfunction; to the radical feminist it perpetuated patriarchy. Sir Edmund Leach, delivering the Reith Lecture in 1968, stated firmly that:

"Far from being the basis of the good society, the family with its narrow privacy and tawdry secrets, is the source of all discontents." (*A Runaway World*, London, BBC. 1968:44)

Feminism, coupled with postmodernism and existentialism made the individual paramount, and so each individual then was to set his/her personal agenda of morality, and accept responsibility for its implementation in society. There were, consequently, wide differences of moral concepts being presented with the belief that people should choose whatever they believed suited them best. Unfortunately, while some members of society would live up to these extremely difficult standards, others would not. The growth of individuality meant that fewer would demonstrate such concern for their disadvantaged members of society. This would leave many of the mentally ill struggling in a sea of relativism.

-Redistribution in the Post World War II Era.

Between 1946 and the 1970s, most Western Governments attempted to steer a middle line between Orthodox Marxism and the New Right. They were striving to maintain and increase spending on the welfare and social security sectors without increasing taxation on the wealthy and business sectors. They attempted to develop and maintain social justice programs without raising all the required finance by redistribution (Theophanous,1994:53-57). This was only possible when governments spent surplus monies that they had not raised, thereby constantly increasing deficits. The concept of a balanced budget was ignored (Theophanous,1994:148).

During this period of time, relying on neo-Keynesian economics **(42)**, many of the Western nations believed they could increase development of government services (the public sector) and could raise sufficient money to pay for this expansion without endangering the economic structure of the country. It was believed that this situation was sustainable during a period of high employment and low inflation. Unfortunately, during the 1970s, both inflation (due to the Organization of Petroleum Exporting Countries, 'OPEC' increasing oil prices), and unemployment occurred together, and this caused the theory to be modified and for the most part, Keynesianism to be abandoned (Theophanous,1994:149). The hope that expansion of government could continue was exposed as an illusion. **(43)**

However, it has been demonstrated in all Western nations, that when growth in state expenditure outstrips growth in the economy, the first cutbacks are made in welfare and social security services (Theophanous,1994:150). This has serious overtones for care of the mentally ill, who, unable to work, may be depending on the welfare system in order to

exist, and for whom a downturn in the economy may mean an inability to find employment during a remission of their illness.

With unfortunate timing in 1971, John Rawls's Theory of Justice was published. It was designated by the New York Book Review as one of the most significant books of the year, believing that its political implications may change our lives. Rawls's work with the concepts of justice and fairness, was described in some detail in Chapter Two, (pp.43-46, **fns 30, 31**). The work received critical acclaim in academic circles, but its political impact was blunted by the timing. The philosophy and politics of the New Right were establishing themselves as the dominant views especially in USA and UK, and later in Australia. Especially critical was Robert Nozick, whose libertarian views were explored in some detail in Chapter Two, (pp.41-43, 46) and whose sympathies lay with the economic rationalists such as Milton Friedman. **(44)**

-Economic Rationalism.

The beginning of the economic depression of the 1970s gave the New Right an opportunity to make a philosophical come back, and in a number of Western countries, the New Right seized the moment to press its philosophical view of minimal government to the fore. Writers such as Milton Friedman, Robert Nozick and Ayn Rand, for example, urged that a dramatic reduction in welfare and public services was required in order to reduce the state debts. They also insisted that the redistribution that had occurred must be reversed, by reducing the taxes on companies and wealth, because these prevented investment (Theophanous,1994:150). The name given to the new policy was Economic Rationalism, a policy which promoted the scientific organization of industry, to ensure the minimum wastage of labour, the standardization of production, and the consequent maintenance of prices at a constant level. (Oxford University Dictionary, 1973:1750). The policy denoted the belief of politicians and their advisers in the capacity of the market to produce an efficient allocation of resources (Friedman,1962).

Using such a theory, Margaret Thatcher declared the ultimate in Enlightenment belief in the individual, that there is no such thing as society, only a collection of individuals (in Sacks, 1997: 2). Mrs. Thatcher was in company with Ayn Rand who made the same assertion in The Virtue of Selfishness. (1964:30) There is no acceptance of the common good in such a declaration, or of attempting to assist each person to attain his/her potential. There is no

regard for the physical or other weaknesses of individuals. The concept of social justice is drastically changed, and in fact disappears from the political and economic landscape.

As happened during the Thatcher decade in UK, by constantly depicting the unemployed as feckless, and welfare as encouraging their impecuniousness, the sympathy of the community may be eroded, and as employment opportunities shrink, so fear and anxiety on the part of society for their own financial well being, cause selfishness and disregard of the disadvantaged to creep in (Theophanous, 1993:152). The interest is in 'self', the rest is rejected as 'altruism'. Such an environment encourages a situation which has occurred in all three Western countries under scrutiny: a polarization of not merely the poor and the rich, but a cleavage between the avidly greedy and the desperately destitute. One is reminded of Gordon Gekko's speech in the film : "Wall Street", extolling the greatness of greed. "What is greed? Greed is good. Greed is what makes the world go round". In such a world as this, the promise of high returns on company shares encourages share-holders to consider self-interest above all else. If this occurs as a result of 'streamlining' the workforce or outsourcing production to the Third World with exploitation of already impoverished local populations, so be it. The mentally ill are not likely to receive a sympathetic hearing in such an environment, and as will be shown in Chapter Five, will constitute numbers of the destitute homeless, jobless and people full of hopelessness. They will be the 'losers' of the new, heartless value system, ignored by the 'winners' of the world, such as the Friedmans and the Rands who relate success to a strong economy and satisfactory dividends, not to the common good. (45)

One sees in Ayn Rand's assertions the libertarians' distortion of the principle of subsidiarity which was discussed in Chapter Two (page 61). It is interpreted here in Ayn Rand's words:

If (man) finds (strangers) to be virtuous, he grants them personal, individual value and appreciation in proportion to their virtues... It is on the ground of their generalized good will and respect for the value of human life, that one helps strangers in an emergency- *and only in an emergency*. (Italics in the original. (1964:54)

Reinforcing Milton Friedman's notions of 'freedom', Ayn Rand lists the economic Bill of Rights written into the American Constitution in 1960. It is instanced here:

"The right of every family to a decent home...to adequate medical care and to achieve good health..(the right to) a good education." (1964:113)

Ayn Rand asks the same question as Milton Friedman and his disciples: “At whose expense?” (1964:113) With this one question, the economic rationalist reveals a judgmental attitude to the needy, and an apparent indifference to their sufferings.

The rise of economic rationalism may be seen as a reinforcement of libertarianism, in that the leader, Milton Friedman, defended his theory as a statement for freedom, and disentanglement from central government control (1962: 1-3). Friedman, for example, to whom the ‘New Deal’ and Democratic principles in USA government were anathema, denounced President Kennedy’s inauguration speech of 1961, in which Kennedy had appealed to the patriotism and generosity of the American people; especially, he appealed to the idealism of youth:

“Ask not what your country can do for you, but what you can do for your country.” (January, 1961)

This appeal, Friedman declared was a demonstration of a patriarchal attitude, and a desire to maintain central power (1962:3). Friedman also, in outlining an economic policy totally opposed to Keynesian proposals, rejected the need for a ‘safety net’ or indeed for welfare assistance. He believed, he wrote, that there were now no needy poor in USA (1962: Chapter 6). There was, Friedman stated, a possibility for all who wished to work to do so. In condemning State assistance with cheap housing and rental assistance, he declared this was an unwarrantable use of taxpayers’ money. If help must be given, Friedman saw a loan of a capital amount being offered, which the recipient could spend as desired without State interference (1962:Chapter 6). An echo of this was voiced by the Howard government of Australia in the Budget speech of 2001, in which a first home loan would be offered up to \$7,000.00, some of which the recipient could spend in any way desired (Hansard, 2001).

Such policies demonstrate a total unawareness of the various types of dire poverty that can and do exist in the face of plenty, and denigrate the term ‘social justice’ making it into an emotive term of derision: ‘bleeding hearts’; ‘do-gooders’. Whatever term is applied, it demonstrates a legalistic interpretation of governmental and societal attitude towards the disadvantaged, including those unable to help themselves, such as the mentally ill. It rejects the Judaeo-Christian ethic of ‘unconditional love’ for our fellow human beings, by dividing the poor into ‘deserving’ and ‘undeserving’ categories. This has been witnessed in Australia during the Liberal Government years, with Minister Tony Abbott’s condemnation of those who are poor, he believes, through their own fault, because they gamble, drink or

otherwise use taxpayers' money (The Australian Political Review, 2001). The helplessness of such people's dependants such as children or partners, does not seem to have entered the fiscal equation. It also emphasizes the Liberal Government's hold to Utilitarian theory, where the work ethic is upheld, and only those willing (and able) to work- 'the deserving poor' should receive government assistance.

Jurgen Habermas writing in Legitimation Crisis, (1973) argued that the modern nation state must provide a minimum of services, such as unemployment and social welfare benefits, so as to preserve its legitimacy in the eyes of the voters. However, it cannot continue to meet these increasing demands for services without creating its own fiscal crisis. Moreover, to continue to bear this fiscal crisis, undermines the operation of the market economy. A vicious circle is created: this situation puts added pressure on the State to reduce the welfare/social services budget, and/or increase taxation on individuals and companies. Therefore, Habermas concludes, whatever the State attempts to do, a legitimation crisis, or an economic crisis is bound to occur. Andrew Theophanous has maintained that these crises are overcome in a democratic government by the process of Elections, when the people may change the government, thereby using a safety valve to reduce the pressure on the situation (Theophanous, 1994:152). (46)

It is suggested that neither Theophanous nor Habermas recognized that by the political parties playing musical chairs with the electorate and not removing the problem itself, the electorate may become cynical and disillusioned with the entire democratic procedure. It may become hostile to those it sees as receiving welfare payments during the enforced periods of leisure time caused by unemployment, and it may participate in a cynical exercise in political legitimacy as was carried out in England by Margaret Thatcher in the 1980s and Ronald Reagan in the USA. Their governments demonstrated that it was possible to go much further than Habermas had supposed, and to cut severely, welfare state and social justice programs while still retaining political legitimacy. Similar lessons might be learnt from the re-election of the Howard government in 2002. (47)

In England, Thatcherism showed that even when implementing economic rationalism by appealing to people's selfishness and greed, one could change the social ethos, and polarise the nation (Theophanous, 1994:152). With the aid of a powerful media tycoon, it was possible also to make society cynically oblivious to the needs of its members, changing the

value system from one of belief in the common good, in social, political and bureaucratic integrity and mutual support, to that of total egocentricity and cynicism. While Margaret Thatcher and Ronald Reagan themselves have now been discredited, their views live on bearing different labels, and with only slight modification. New Labour in UK, and ALP and Liberal Parties in Australia, have embraced economic rationalism, which is also standard practice in USA.

In such a climate, it is difficult to promote the needs of the disadvantaged and the vulnerable. Politico-economic strategies can only relate to the vulnerable, such as the mentally ill, if it is acknowledged and accepted by all members of society, that the needs of all individuals, well and ill, must be met in accordance with the common good, and all need to act accordingly (Theophanous,1994:153). This difficulty of recognizing the needs of the disadvantaged was going to be very true for the mentally ill who were going to be de-institutionalized during this most unstable period.

That the climate of economic rationalism was not going to be beneficial for all members of society, and would indeed be detrimental to the needs of the marginalized, was acknowledged by responsible academics in Australia, who endeavoured to steer politicians away from what was seen as a dangerous economic path. In 1991, a statement related to Economic Rationalism, voicing their disquiet at the effect of this policy on the stability of society, was signed by two hundred and three academics from economics and social science departments in Australian universities nation-wide. It was sent to all major newspapers in December 1991, and also to the then Prime Minister, Bob Hawke, as well as, shortly afterwards, his successor, Paul Keating. No official response was ever received. The text is at Appendix 4.3.

-The challenge of Globalization.

The ability of the mentally ill to reach their full potential during remission of illness was threatened also by the operation of the economy within a global environment, thereby limiting the pursuit of redistribution. (48) This movement has led to considerable structural unemployment throughout the Western world, thereby causing marked increase in individual mental stress and depression, financial hardship for millions, and a bleak outlook for many of the workforce. During the 1980s, this unemployment figure throughout the Western world reached thirty million people, (Theophanous,1994:155), a figure that is

unacceptable from the social justice point of view, and included those most potentially at risk to employers as suitable full time workers, such as the mentally ill.

Employers in such times of financial uncertainty, may well ask why they should take the risk of employing someone who suffers from a mental illness. Does social justice demand this? The answer is surely that unemployment is a bad thing leading, for example to lack of self-esteem, rejection by the community and economic deprivation. As members of the community, therefore, we should do all that is humanly possible to eliminate it. Included among the vulnerable who run the most risk of unemployment are the mentally ill and the unskilled; however, such an attitude towards employment of the disadvantaged requires a value system respecting all human beings, and consequently including social justice.

Natural Law provides such a value system as was shown in Chapter Two, and will be further demonstrated in Chapter Five. Natural Law is a superior way of looking at social justice compared with the egocentric coldness of economic rationalism. This is difficult to prove, however, because the argument requires common ground to be found for debate. Perhaps the best way of changing economic rationalism is by considering the conception of self as involving the community. We have to work from the community needs first of all, and consider the obligations we owe each other, not from the point of view of what we want for ourselves regardless of others. We can see President Kennedy's challenge to American Society, which was quoted on page 196:

Ask not what your country can do for you, ask what you can do for your country. (January, 1961)

as a justification for using a value system which employs the common good and social justice for all, and rejects the harshness of unfeeling economic rationalism.

-Positive Aspects of Globalization.

Rapid technological development can add a positive dimension of communication between peoples all over the world. The media, electronic mail and communications via satellites have made it possible for a common understanding to be enabled and common threads of knowledge to exist throughout the globe. Much again, depends on how this feature is managed. It can result in monopoly and promotion of one culture attempting to dominate the world as shown in fn48, (such as the American popular culture, the Big Mac mentality) or it may result in a breakdown of the parochialism and jingo-ism related to nation states, as their frontiers become blurred, as in the European Common Market. By means of the

personal computer, the individual is in a position of personally communicating internationally, entering into dialogue with communities of diverse cultures and languages. This has great significance for the transmission of electronic knowledge in psychiatry and other medical disciplines. At the time when deinstitutionalization was initiated, however, these positive aspects were not on the horizon. What was very much on the economic agenda, however, was the consideration of health care as an economic science.

-The challenge of the Economics of Health Care to the mentally ill .

During the 1970s, a marked change to the language of health care became noticeable. Previously, models of care, such as the medical model, psycho-social model, educational model *et al*, had measured their outcomes in terms of health restoration, diminished illness, curative efficiency. Now, faced with increasing fiscal debts, and ever increasing medical costs, accountants found their way into the health team. In all aspects of public life, economists came to the fore; the prevailing health model became one that could be developed to answer economic questions. The measured outcome now was in terms of “costs”, and the problem of health care was conceptualized accordingly, into a model that would provide the economists with the answers they wished to receive.

Ashmore, writing in Health and Efficiency, (1989) stated that economists might provide assistance by offering helpful advice. On the other hand:

“When economics is presented as the answer to inefficiency and the sole promoter of rational-decision making in health care...(it) leaves no room for politics or for professional decision-making - unless they too are cast in the technical mould of rational economic calculus.” (In Beyond the Market 1993:121)

By importing these models of economic management into the health arena, health economists were empowered to implement their tools in order to interpret and make decisions about health resource allocation, and also to promote a view of health care as needing to be governed by economic logic. If, however, an economic value system was to be promoted to the detriment of non-economic considerations, then there was the danger of self-interest being the primary motive:

“Morality becomes a cover for cynical profiteering and monopoly, while self-restraint, charity, solidarity, protection of the weak, and family loyalty all become obstacles to economic progress because of the actors’ attachments to values other than instrumental rationality.” (Davis in Beyond the Market, 1993:122)

To the tidy orderly mind of the economist, health care delivery was a plethora of incompetent outcomes some due to archaic practices ('we've always done it this way'), some to inter- professional rivalries, bureaucratic waste, incompetent and irresponsible decision-making, and some to the inevitable patients and professionals who were believed to waste and misuse scarce resources. The time was ripe for change by reconceptualizing health care as a commodity that consumers might choose, or by matching outcomes in such a way that would ensure the rational as measured by a quantitative outcome. The semantics changed to suit the environment. Patients, such as the mentally ill, were now 'clients' or 'consumers'. Health became an 'industry'. Various solutions were under consideration during the 1970s. There were those who urged the repeal of Medicare, and a return to the early state of private care, paid for by the patient, using private hospitals, and health care, means tested, and free of government control for the general public, with those unable to pay Health premiums utilizing the public hospitals (Davis,1993:122).

Others, wishing to borrow from the disastrous USA health models, urged the introduction of Diagnostic Related Groups, (DRGs). These identified the principal diagnosis, surgical procedure, co-morbidities and complications, as well as sex, age, and discharge disposition. It was presumed that for any of the 467 categories of patients identified, the resources needed to treat each one would be identical. The budget for a health facility would be based thus on what had been recorded on the patient's chart, and on the case-mix treated (Davis,1993:126-127). (49) Any excess costs would not be reimbursed. The pressure, consequently, weighed heavily with the health faculty to produce health care at a cheaper rate than budget, or else precisely according to the plan. It allowed no consideration of the patient's social background, the rate of convalescence or other ancillary health factors which might occur along the way. It provided no satisfaction for either the professional, who might have to accept a half completed health program of recovery, or the patient, who might indeed realise that a little longer stay in hospital would have seen a much more satisfactory rehabilitation take place. DRGs found their way into the Australian health system including the mental health branch, despite Health Departments' assertions that diagnosis is not a good predictor of the type or length of care a mental health patient will require, and thus of the resources needed for that specific patient's care. Budget deficits still continued to grow. It was against this background of social, medical and economic change, that the concept of de-institutionalization would be introduced, causing mental

health care to undergo a radical change, and topple asylumdom from its entrenched position.

5.The concept of de-institutionalization: how it changed mental health care and why.

By the 1970s, most States and Territories had re-written the old Lunacy Acts as Mental Health Acts, and the effects of drug therapy were evident in the decline of the residential population of the psychiatric hospitals. The paradigm in mental health care was being deliberately moved from custodial asylumdom to community centred 'open door' therapy. The hospital, as originally envisaged by Caplan, was to be utilized for acute care only, with preventative measures and rehabilitation taking place in the community itself (Caplan,1983:146). O'Sullivan has quoted the following statistics for that period. In NSW the 11,743 patients under detention in 1958, had fallen to 3,749 in 1974. Over the period 1965 to 1978 the hospital residential population fell from 3.0 per 1,000 persons (about 12,000 patients), to 1.2 per 1,000, (approximately 5,000 persons.) Almost all this decline was attributed by the Authorities to the fall in long term bed usage. However, as residential population declined, so the numbers of admissions increased. In 1965, they were 3.8 per 1,000, (about 15,500 persons). In 1978, they were 5.1 per 1,000, (approximately 25,000). This increase of some 10,000 per annum represents a big increase in re-admissions (the so-called 'revolving door policy.') These were patients who were discharged into the community, but suffered a relapse and had to be re-admitted and stabilized once more. Voluntary admissions increased almost threefold during this period. In 1965, voluntary patients comprised twenty three per cent of inpatients. In 1975, they comprised almost fifty per cent. Eighty per cent of admissions were voluntary, indicating that the treatment/discharge rate of voluntary patients was more rapid than that of involuntary patients (O'Sullivan,1981:14). Similar figures may be quoted for all States.

While it was encouraging to note the residential numbers had decreased so dramatically, the question needs to be asked, as to what were the causative factors for the constant re-admissions. Were these patients who were experiencing an episodic attack of, perhaps, schizophrenia, or were they patients who, unsupervised in the community, or experiencing side effects from their medication, had ceased to take their medications and were becoming health recidivists? Theoretically, the return of psychiatric hospital patients to the community was to be associated with outpatient clinics, and residential centres so that where necessary, care and supervision could be maintained. Because there were few

‘follow up strategies’ for patients once they were discharged into the community, the evidence of outpatient facilities or non-facilities, is only anecdotal. Even in Britain, however, where the new open door policy had been inaugurated in 1959, facilities are stated to have been inadequate (O’Sullivan, 1981:15). Studies undertaken in Australia, did indeed show that some sort of system of community psychiatric care was indeed in place and working. Nevertheless, dissatisfaction was often voiced, during the ‘sixties and ‘seventies with its implementation.

Britain showed that the open-door policy of normalization could have serious problems (O’Sullivan, 1981:16). Of 174 discharged schizophrenics who left hospital to a known address, only 94 could be traced twelve months later, and 29 of those were in unsatisfactory accommodation (O’Sullivan, 1981:16). The studies showed that a substantial proportion of discharged patients failed to take their medication properly even when it was essential to control their illness-.hence the re-admission level (O’Sullivan, 1981:16).

In Australia, there were disquieting signs observed. In the NSW Legislative Assembly in March, 1979, the member for Ashfield raised the issue of poor standards of accommodation for former psychiatric patients in his area.

Spotters were said to receive fees for shepherding discharged patients towards sub-standard boarding houses...There were complaints (by neighbours) of abusive and obscene language and the smell of urine coming from some of the boarding houses.A women’s refuge in Blacktown in September 1978 made a plea for former women patients who, for want of ...accommodation, had to roam the streets at night. Some had attempted suicide. Numbers had been the victims of rape and other violence. (O’Sullivan, 1981:16)

These and similar reports came also from other States and Territories. Legislation providing for the registration and oversight of boarding houses for former psychiatric patients in NSW was not announced until April, 1981.

During the 1980s, there were investigations and reports submitted from each State and Territory emphasising the need for organized and adequate community care for the mentally ill. Relevant reports are listed in the Bibliography at the end of the thesis). During the 1960s and 70s, however, the psychiatric hospitals were being emptied speedily, and, it seemed at times, with scant regard to the situation awaiting the patient outside the institution.

It is possible that to the Authorities, the transfer of the location of the mentally ill from an asylum to what was euphemistically believed to be the family home, was seen as hopefully, a reduction in public spending. Many of the asylums, standing in isolated splendour one hundred years ago, were now occupying prime pieces of real estate in areas close to ever expanding cities. What the Authorities had not foreseen, however, was the effect of a variety of philosophical views upon society which encouraged egotism, and upon influential instruments of change. They underestimated the serious economic downturn upon employment possibilities, and the lack of understanding of mental illness among the community due to a failure by Authorities to educate the latter into the reasons for mental illness, and the needs of the mentally ill.

Despite these setbacks, the period of de-institutionalization may be seen to show a compassionate understanding of the mentally ill as members of the human family, needing companionship and a sense of 'belonging' to society. It was a time when the desire to lock the mentally ill away out of sight in asylums was seen as abhorrent, and there was a genuine desire to do something to help them. The hostility of the anti-psychiatry school may be seen as having sharpened that focus on the plight of the mentally ill by psychiatrists, other health professionals and community members alike.

In USA, events unfolded after World War II in a similar manner to Australia. The same reaction of new young psychiatrists returning from the War was evinced as had occurred at Callan Park. Deutsch's book The Shame of the States published in 1948, reflected the horrors of what he had witnessed when touring some of the asylums in that country (New York, 1948:42-43,49). The photographs Deutsch published of the male 'incontinent ward' were :

"Like a scene out of Dante's Inferno...Three hundred nude men stood, squatted and sprawled in this bare room, amid shrieks, groans, and unearthly laughter." (1948:42-43,49)

It was on this type of publicity that the anti-psychiatry school had fed. Coupled with the advent of the antipsychotic drugs in 1954, the decline in the population of the asylums began (Shorter, 1997:279). In USA the number of resident patients within state and county mental hospitals declined from 559,000 in 1955 to 338,000 in 1970, and to 107,000 in 1988, representing a decrease over the thirty year period of more than 80 per cent (Shorter, 1997:279).

If drug therapy was responsible for the initial drive to community living, what maintained the momentum for the decanting of vulnerable patients on to the street and into dubious accommodation? Shorter and Scull have both agreed that besides the genuinely altruistic movement to treat the mentally ill within a more acceptable framework than asylumdom, the anti-psychiatry school unleashed a barrage of propaganda outside of medicine, and there was a pressure also of the ideology of community psychiatry within medicine (Shorter, 1997:280). Well meaning psychiatrists had absorbed the teachings of, for example, Joshua Bierer *et al*, and asserted that ‘therapeutic communities’ could be constituted in a romanticized view of metropolitan, sophisticated townships (Shorter, 1997:280).

Community Mental Health Centres (CMHC) spawned by John F. Kennedy’s 1963 legislation...soon became diverted to psychotherapy sessions for the walking well...in the first decades of deinstitutionalization no administrative arrangements were made to receive the actively ill patients who were simply ...pushed out of the mental-hospital doors. ...A third of the homeless were mentally ill, unable to organize their lives and find shelter or work. Other discharged patients drifted into the criminal justice system, one study finding that 14 per cent of county-jail inmates had had previous psychiatric treatment. (Shorter, 1997:280)

Again medication was frequently abandoned because of tardive dyskinesia that caused facial twitching and other involuntary movements (Shorter 1997:280). The British psychiatrist, Henry Rollen, returned to the USA decades after working there in the 1950s and reported that poor as the standard of care might have been in the asylum, it was better than that being offered in the 1980s.

“There is no alternative to the side-walk, doss house or prison.” (in British Medical Memoir Club, 1990:92)

In all three countries, concerns were being raised about the strategies employed in de-institutionalization, and challenges were being thrown down to bureaucracy to improve the situation which was for the most part, unsatisfactory to patients and community alike. This challenge in Australia, would be met by the Australian Ministers Advisory Health Council (AHMAC, 1992) and the Human Rights and Equal Rights Commissioner, who, in 1991, convened an investigation across Australia into the Human Rights of People with Mental Illness.

6. Conclusion.

Within this chapter, an attempt has been made to analyze the complex situation after the Second World War, which had direct bearing on the future of mental health care, in UK, USA, and would repercuss on Australia. It has been shown to have been a time of patchy but formidable achievements, such as the pharmacological revolution, leading to a change

in the ability of psychiatrists to bring about a potential improvement in the health of patients suffering psychoses. At the same time, the formidable strength of the drug industry was unleashed to influence mental health care. The proliferation of the drug companies and their virtual stranglehold on anti-psychotic drug production, with the co-operation of many paid psychiatrist employees left a question mark over the psychiatric claims to be objective and scientific. They still were treating effects rarely causes.

The inability of the psychiatric profession to recognise the need of all mentally ill patients to enjoy a meaningful doctor-patient relationship, not just the reception of a Script, played a significant role in the anti-psychiatry group gaining so much momentum, and discrediting psychiatrists and all health professionals including psychiatric nurses, who were attempting in very quickly shifting circumstances, to adapt to hospital and community needs. This was a challenge to the psychiatrists' authority to control psychiatric care, and a challenge to health professionals who, in the face of changes in mental health care, had to convince themselves of the reality of mental illness, and the validity of the concept of community health care.

The introduction of economic rationalism led to serious unemployment during the 1970s and '80s, with resultant difficulties for mentally ill persons discharged from hospital and seeking employment. The inability to find work also demeaned the individual by ignoring his/her self worth and fulfillment in the satisfaction of work. The introduction of business strategies and accountancy into the health sector, turning it into a health industry, would also bring about challenges for health professionals and administrators as to how to relate ethics and business practices. It encouraged rapid discharge of patients from all hospitals, including those in the psychiatric sector.

Much blame, if blame is to be apportioned for the seemingly haphazard methodology for implementing community health care strategies, must rest with bureaucracy, which with apparently unseemly haste emptied the mental hospital inmates into the community, without a community health infra-structure being in place to support them, without a properly formulated mental health policy with which to work, and without adequate thought having been given to educating the community as to the needs of the mentally ill. Little if any thought seems to have been given to addressing how both community members and the newly discharged mentally ill could mutually exist harmoniously within the community

structure. Partly, this may have been because, in the changing social conditions, with mixed strands of various philosophical theories in existence, there was now confusion as to what was meant by 'family' as has been shown, and what was meant by 'society'. Was it merely a group of individuals or did each member have a responsibility to another more vulnerable than him/herself? Because of economic conditions, both partners in a relationship often had of necessity to work, leaving the mentally ill in the same position as they had been during the Industrial Revolution, without anyone to care for them during working hours. Family ties and the old sense of responsibility to family members had also changed (Sacks, 1997:130). It was seen in some cases, as too difficult or too inconvenient to cope with such people as the mentally ill. Dependence on the State, fostered by increased interference by the State, had brought about an anticipated reliance that the State would deal with such problems (Sacks, 1997:132).

There was confusion for the newly released mentally ill patient attempting to adjust to a new environment. After perhaps years of conforming to a strictly regulated structure, the patient found him/herself confronted with the responsibility of making 'choices.' The health professional, often imbued with the Postmodern philosophy, was encouraging the patient to employ his/her rights and choose whatever s/he wished to do. The patient, often not having made a decision for years, discovered a world of shifting sands, forever changing and offering no hope of security. The many changes wrought spawned the sensible idea of normalization, but its implementation was ill-devised, badly and hastily put into practice, much to the detriment of the mentally ill, the community itself and to the health professionals, who were so few in number and almost non-existent in the community sector, which needed them so desperately.

All these changes threw down challenges some of which as has been shown, were being met in a confused way by professionals, bureaucrats and the community itself. In Australia, it would fall to AHMAC to appoint a Task Force to examine mental health care, and the Commissioner for Human Rights and Equal Opportunity to meet the challenges and instigate an *Enquiry into the Human Rights of People with Mental Illness, 1993*. These measures appeared to act as a catalyst and gave impetus to exposing the needs of the mentally ill to receive the same care and consideration as all other Australian citizens. An analysis of this situation will form the theme of Chapter Five.

APPENDIX 4.1

EXAMPLES OF DEFENCE MECHANISMS

Denial: the process by which we minimize unacceptable thoughts, feelings and impulses, and so keep distressing and threatening aspects of reality at bay.

Repression: the mechanism by which an unacceptable impulse or idea, or painful emotion is pushed out of consciousness and is actively forgotten by being excluded from our awareness.

Regression: the return to an earlier stage of psychological functioning, such as that associated with infancy or childhood when one has no personal responsibilities.

Rationalization: is plausible but invalid thinking, used to avoid stressful reality.

Intellectualization: reliance on the bland account of an important personal matter, with much attention to trivial detail and avoidance of feelings in order to keep them at bay.

Displacement: the redirection of feelings toward a situation, object, or person that is less threatening than the actual source of the feelings.

Projection: the unconscious attribution of our own unacknowledged feelings, thoughts and qualities to other people. Disturbing feelings, such as shame, fear and disgust are avoided by projecting them on to others.

Introjection: the taking on of qualities of either a feared or admired person.

Sublimation: is satisfying an impulse by transforming from a socially unacceptable to a valued form of activity.

Reaction formation: the conversion of an unacceptable unconscious impulse into its opposite form.

Compensation: an extreme form of denial, which usually shows in the way a person acts. With an intense need to be active, energetic and joyful, the person 'compensates' for limitations imposed by illness by an abnormal outpouring of energy in all these directions.

From: Understanding Troubled Minds (Bloch and Singh, 1997: 68-70).

APPENDIX 4.2

	Biological	Psychological	Social
Predisposing:	Genes	upbringing	cultural demands
	Mother's alcoholism	parental strife	poverty
	Maternal health	personality traits	migration
Precipitating:	Trauma	bereavement	retirement
	Infection	exam. failure	being robbed
	Illicit drugs	being jilted	stock-market loss
Perpetuating:	Malnutrition	bad marriage	demands at work
	Poor sanitation	conflict with neighbour	refugee status
	Dependence on drugs	delinquent offspring	financial obligation

The mosaic of factors contributing to patterns of thinking interwoven with time.

From: Understanding Troubled Minds (Bloch and Singh, 1997:36).

APPENDIX 4.3

STATEMENT SIGNED BY 203 ACADEMICS FROM ECONOMICS AND OTHER SOCIAL SCIENCE DEPARTMENTS IN AUSTRALIAN UNIVERSITIES NATIONWIDE, DECEMBER, 1991.

Economic policy in Australia has been adversely influenced by the application of ‘economic rationalism’ (as documented, for example, in Michael Pusey’s recent book Economic Rationalism in Canberra.)

This doctrine derives from one distinctive branch of economic theory, based on a host of assumptions about competitive markets which seldom apply in the real world. It subordinates broader social values to free market economics. It ignores the lesson of history that successful economic performance comes from nurturing the institutions and the co-operative relationships conducive to productivity and innovation.

Moreover, it hasn’t worked in practice. The ascendancy of the ‘economic rationalists’ in Canberra has gone hand-in- hand with the intensification of national economic problems, culminating in ‘the recession we had to have’. To address the problem of the recession requires job-creation programs, including infrastructure investment and interventionist industry policies.

We call for a rejection of ‘economic rationalism’ as the dominant economic discourse. A more open and pluralistic approach to the teaching and application of economic ideas is necessary. There are potentially catastrophic consequences of further moves down the track of this discredited ‘economic rationalism’ toward the economic policy program of the new right.

FOOT NOTES CHAPTER FOUR

1. The philosophical view of Marxism was described in Chapters Two and Three, and was a response to the social wrongs inflicted on the workers by many factory and mill owners during the Industrial Revolution. Throughout the nineteenth century, Marx protested against the exploitation of the workers and supported their dignity, urging justice through revolution. Marxism in a distorted form, would be exploited by the Bolsheviks of USSR and would remain in a distorted form as Stalinism, providing a dictatorship government which would endure until almost the end of the twentieth century.

Within a recognised Communist Party, supporting Marxist ideals, Marxism also would remain an influential international body attracting idealists, students and a wide cross section of society for the same period of time, and would influence health care, including mental health.

2. It is, fundamentally, a movement aiming at a classless society based on the socialization of property in the essential instruments of production (Haslett in Honderich 1995,830-831). During the nineteenth and early twentieth centuries, socialism itself became modified, and in England would develop into Fabianism under Sydney and Beatrice Webb. It stood for an evolutionary concept of socialism as opposed to Marxist 'scientific socialism'.

The Fabians may be regarded as the group who first clearly worked out the theory and practical applications of that form of 'gradualist' socialism which, in practice, became the policy of the Labour and Socialist parties in countries such as Great Britain, Australia and New Zealand.

3. Martin Heidegger, (1889-1976) is a notoriously obscure writer whose works include arguments against idealism, including Kant's critical idealism (Inwood in Honderich, 1995:345). Heidegger's thought has often been considered similar to Duns Scotus, showing a respect for metaphysics, history and subjectivity (Inwood in Honderich, 1995: 345-348).

4. Arthur Schopenhauer, (1788-1860) was a German philosopher who achieved distinction initially because of the influence of the British Utilitarian journal: The Westminster Review (Sprigge in Honderich, 1995: 804). Renowned for his rather gloomy outlook on the world, Schopenhauer's works on ethics which he published in 1841, included a preface that contained a critique of Kant's account of morality. Schopenhauer believed a categorical imperative, as opposed to a hypothetical, to be absurd, stating that the categorical imperative only seemed to make sense to Kant because, unconsciously, he took it as the command of God (Sprigge, 1985, Chapter 4). In contrast, Schopenhauer identified moral goodness as unselfish compassion for others. The good man is one, who not making a distinction between himself and others, is filled with a universal compassion. In making this assertion, Schopenhauer is demonstrating his awareness of what metaphysics teaches in the abstract: the oneness of the Will in all its manifestations, by his statement 'Injure no-one...help everyone as much as you can.' (in Sprigge, 1985: Chapter 4) For Schopenhauer, the goal of compassion is the relief of misery, and does not include the creation of positive happiness-a manifestation of his pessimistic view of the world (Sprigge, 1985: Chapter 4). Nevertheless, his writings on compassion for one's fellow sufferers bear a similarity to Kant and are significant in the thread of thought linking the different philosophical thoughts related to the time frame of this thesis.

5 .John Dewey, (1859-1952) was an American philosopher who is remembered essentially as a pragmatist, who addressed the problems of epistemology, metaphysics, ethics and aesthetics. Pragmatism itself, may be traced back to the Academic Sceptics of classical antiquity. They taught that truth cannot be achieved by authentic knowledge, therefore, we must make use of plausible information adequate to the needs of practice (Hanson in Honderich, 1995:197-198).

Kant's stipulation:

"contingent belief, which yet forms the ground for the effective employment of means to certain actions, I entitle *pragmatic belief*". (Kant 1781 a 824, b 852, cited by Rescher in Honderich, 1995:71)

was influential in the development of pragmatism. Schopenhauer's insistence that the intellect is universally subordinate to the will was also influential in developing pragmatism, and this thinking was developed by subsequent neo-Kantians (Rescher in Honderich, 1995:710).

Moral utilitarianism with its tests of the rightness of modes of action in terms of their ability to provide the greatest good of the greatest number also played a part in the development of pragmatism. The similarity here is borne out by act utilitarians' contention that an act is right if it results in the greatest good for the greatest number, and the thesis orientated version of pragmatism's theory of truth-holding, that an empirical claim is correct if its acceptance is maximally benefit-producing (Rescher in Honderich, 1995: 710-712).

Perhaps the greatest other influence on the pragmatic philosophical view came from Charles Sanders Peirce (1839-1914) who is regarded as the founder of pragmatism. The latter is seen as a rule for clarifying the contents of concepts and hypotheses, and is intended to reveal all the features of the meaning of concepts and hypotheses that are relevant to scientific investigations (Hookway in Honderich, 1997: 649).

Like Peirce, Dewey saw inquiry as a self-corrective process in which norms must be evaluated and revised in the light of subsequent experience. Dewey, however, unlike Peirce, regarded the reworking as a social and communal process proceeding in the light of values that are rooted in the psychic disposition of ordinary people (including the moral and aesthetic dimension), whereas Peirce saw the reworking as specifically related to prediction and experimental control of science (Rescher in Honderich, 1995:712).

Pragmatism for many years, was given only token recognition in Europe, although Ayer endorsed pivotal aspects of pragmatism. It was seen as an 'American philosophical view.' (Rescher, 1977 in Honderich, 1995:712)

Dewey focused on education to implement his theories of inquiries of successful science and problem-solving of ordinary everyday life. In his striving to practically improve education, he argued that children are not empty vessels into whom knowledge may be poured, but :

"...should be seen as active centres of impulse, shaped by and shaping their environment." (Hanson in Honderich, 1995:198)

Because children will be influenced by social interaction, it is the responsibility of teachers, professionals and parents, to act responsibly in shaping that environment, provoking not only acceptable social conduct, but also intelligent inquiry. To these ends Dewey founded the Laboratory School at the University of Chicago, with the aim of developing a goal for children of 'growth', in powers, and in capacities for experience (Hanson in Honderich, 1995:198).

In this experiment, Dewey was also promoting his belief in democracy, which he believed in passionately, to promote, in the everlasting cycle of change within the world, that change was managed for the good of the

human race (Hanson in Honderich, 1995:197). His ideas in education, coupled with his belief in democracy, came to the fore in American educational thought at the beginning of the 'cold war' with USSR and the Eastern bloc. Science was now seen as all important in education, and education itself was to be developed within pragmatic perimeters, to order to provide competent scientists .

Holding to his democratic views, and with his beliefs in the development of the whole person in education, Dewey may be seen as a promoter of justice, human rights and social justice. Dewey's ideas exercised considerable influence on the development of nursing as a science during the 1950s.

6. The strategies that were employed to introduce later drugs into to the psychiatric world were laid down almost at random in the introduction of the earliest drug of significance: Chlorpromazine. The pharmaceutical revolution that changed the face of psychiatric practice made possible the use of specific health care protocols instead of the previous haphazard speculative attempts at physical treatments. The change began in 1951 with Henri Laborit, a surgeon in the French Navy, who had experimented with synthetic anti-histamines as a means of 'potentiating' the enhancing effect of anaesthesia. The anti-histamines had been discovered in 1937, and Laborit theorized that one of this group of drugs might act as a 'potentiator' during an operation, thereby blocking the autonomic mechanisms involved in shock (Shorter, 1997:248-250).

The small Rhone-Poulenc Drug Company had systematically designed the phenothiazine group of drugs, and Laborit worked with recent anti-histamines of this group. It is interesting to note, that Laborit's aim was essentially related to the effect of the drug on biological outcomes, not the psychiatric world. Beyond noting that tense patients became more relaxed, no further interest in the drug was noted. Laborit persisted with his work on shock, and in June 1951, asked Rhone-Poulenc for a sample of a new phenothiazine recently synthesized by a company chemist, Paul Charpentier. This drug, which originated as 4560RP, became the compound 'chlorpromazine'. Laborit discovered that when administered to surgical patients, it produced a state of disinterestedness with the procedures. Shorter has observed that as a result, Laborit mentioned the drug to three not particularly enthusiastic psychiatric colleagues, and thought it might be of some use to them. In the manner of psychiatry until then, they used it randomly in conjunction with barbiturates, and found that patients improved; chlorpromazine had not injured them (Shorter, 1997:249). The information came to the attention of Deniker and Delay. Jean Delay was professor of psychiatry at the Sorbonne, and director of the Ste. Anne mental hospital in Paris. Deniker was on the hospital medical staff. At the hundredth anniversary of the Medical Psychological Society in May, 1952, they described their work with chlorpromazine, but reference to Laborit was omitted (Shorter, 1997:249-250). Deniker and Delay have consequently been credited with discovering phenothiazine, in the same way that Fleming is credited incorrectly with developing Penicillin, while Florey's work with Chain at Oxford is often overlooked. The company chemists of Rhone Polenc had systematically designed the drug and conducted animal experiments and tests. They did not, however, identify chlorpromazine as an anti-psychotic (Shorter 1997:250).

7. In Montreal, Dr. Ruth Koeppe-Kajander observed the drug being used as a potentiator of anaesthesia, and on completion of her internship commenced training in psychiatry. She obtained permission to use chlorpromazine on twenty five patients, and at a psychiatric meeting in Toronto, in November, 1953, reported on the remarkable and calming effects of the drug on patients with catatonic schizophrenia and 'other forms of excitement'. (Griffin in Canadian Psychiatric Association Bulletin April, 1994:26, 2:5) Kajander did not publish her work and her name is not connected with the pharmacological revolution in North America.

Shorter reports that this is because Rhone-Poulenc had an office in Montreal, and their sales representative left samples of chlorpromazine with Heinz Lehmann of Verdun Hospital in that city (Shorter, 1997:252). After reading papers by Delay and Deniker, Lehmann began using the drug, obtained a further supply from the drug company and, between May and July 1953, administered it to seventy one patients. He was astonished at the rapid and positive results. Lehmann's forceful presentation and convincing statistical results delivered to English speaking audiences, persuaded psychiatrists that although chlorpromazine was not treating the condition, it was affecting the manifestation, and making normal living a possibility for patient and relatives for the first time (Shorter, 1997:253-254).

8. Sigmund Freud (1856-1939) the founder of psychoanalysis, is credited with the discovery of a specific type of 'unconscious'; that is, that when the subject's loss of authority with respect to his/her own mental states is due to a process Freud named 'repression', these states are subject to transformation which renders them unrecognizable by the subject and may have pathological consequences (Cioffi in Honderich, 1997:300). After World War I, Freud developed his theory of the division between conscious and unconscious into a tripartite arrangement of id, ego, and superid to propose a continuum of degrees of severity between those influences that shape personality development and those that cause emotional disturbance.

Freud alleged that a troubled mind, such as one suffering degrees of anxiety arose when the ego was challenged from one or more of these three sources:

- The id seeking expression. (a child's nightmares reflecting his attempt to deal with murderous rage following his mother's incessant destructive criticism);
- Demands of the superego (a young woman reared in a traditional social pattern developing anxiety in the face of her sense of obligation to remain in a patently destructive marriage);
- Perceived threats from the outside world (a woman experiencing acute terror upon discovering a breast lump).

The ego 's ability to withstand these challenges depends, according to Freud upon the nature and sturdiness of its defence mechanisms (Bloch and Singh, 1997:29).

Freud's daughter, Anna Freud, demonstrated that the human being uses coping mechanisms to deal with crises in our lives. They help to reduce stress and are a problem-solving effort to assist our return to a balanced state (Bloch and Singh, 1997: 29). Examples of these include:

- Realistically avoiding the source of stress, by withdrawal or distraction;
- Seeking appropriate help from family, friends or professionals;
- Reducing tension by using various methods of relaxation;
- Recognizing the challenging features of a stressful situation;
- Applying problem-solving manoeuvres-identifying the problem, clarifying its nature, mapping out possible options for dealing with it, choosing the most appropriate option and monitoring its effectiveness;
- Drawing on past experience relevant to the stress;
- Using humour to achieve a more balanced perspective;
- Adopting a stoical attitude (Bloch and Singh, 1997:66).

According to Anna Freud, a form of coping is by use of defense mechanisms which are unconsciously determined; that is, we consciously choose the coping strategies but are not aware of the defences we use.

Their value is in protecting us from unpleasant emotions, such as anxiety, guilt and shame, which in turn are the result of conflict or other threatening situations (Bloch and Singh, 1997:66). A list of the most pertinent defence mechanisms is at Appendix 4.1.

While the defense mechanisms, used judiciously, are still favoured by therapists today, Freud's psychoanalysis of repression resulting in neurosis, is not so popular today in therapeutic circles. His aetiological speculations are considered to be remote from clinical experience and dependent upon idiosyncratic preoccupations. For example, Freud's postulation of a death instinct as an impulse to return to a pre-organic state of quietude, has provoked much scepticism in psychological circles. Schur has suggested that there may have been a temperamental affinity with the notion of a death instinct. Freud was influenced by Schopenhauer who held the view that the goal of life is death (Schur, 1972 in Honderich, 1997:301). There are, however, theoretical deficiencies in this concept which remain at the level of conjecture.

9. Cognitive therapy deals with the interplay between learning, information processing and experience. It is another major approach to the understanding of mental illness. Cognitive therapy suggests that psychiatric illness may occur as the result of familial experiences in childhood, at school, with peers, or in various social groups. These all add to the pattern of thinking, known as *schemas*. If these experiences are distorted or negative, they result in a disturbed way of thinking in later life (Bloch and Singh, 1997: 33). These factors may be biological, psychosocial or social, and may occur simultaneously or individually, and at various times. The various typical biopsychosocial factors interacting with time are shown at Appendix 4.2.

10. A potentiator is a drug which, when administered simultaneously with another drug, produces a synergistic action in which the effect of the two drugs together is greater than the effect of the drugs given separately (Mosby, 1990:950).

11. Shorter has commented that:

Chlorpromazine initiated a revolution in psychiatry comparable to the introduction of penicillin in general medicine. While it did not cure the diseases causing psychosis, it did abolish their cardinal symptoms, so that patients with underlying schizophrenia could lead relatively normal lives and not be confined to institutions...Delay and Deniker proposed the name 'neuroleptic' for drugs that diminish psychosis....Americans preferred the term 'antipsychotic'. (Shorter, 1997:255)

12. The fact that Freud was a refugee in USA escaping from National Socialism after Germany invaded Austria in 1935, meant that he represented a comfortable and recognizable landmark for the many Jews who moved to America during that period. This may have explained Freud's popularity in psychiatric circles with large numbers of clients, and the acceptance of his theories by teaching hospitals in USA (Shorter, 1997:181-189). John Cuddihy has described psychoanalysis as :

“...a plausible ideology for a decolonizing people.” (1974: 46)

13. 'Medical model' describes the traditional approach to the diagnosis and treatment of illness, as practised by physicians in the Western World since the time of Koch and Pasteur. Using a scientific method: hypothesis, data collection, identification of the problem, treatment of the problem, evaluation of the result of treatment and reformation of the hypothesis (if necessary), the physician focuses on the defect or dysfunction within the patient/client. The medical history and physical examination together with diagnostic tests contribute to the data, for the identification and treatment of the specific disease (Mosby, 1990: 735).

14. The syllogism implied here is that: 1. All medical disciplines use a medical model; 2. Psychiatry is a medical discipline; therefore 3. Psychiatry uses a medical model.

15. There have indeed been instances when the lack of a differential diagnosis has categorized a medically ill patient wrongly as 'psychiatric'. For example, it has not been unknown in the experience of the writer, for a patient suffering from thyrotoxicosis to have been misdiagnosed as being in the manic stage of manic-depressive psychosis, or for a patient with myxoedema to have been labelled as a 'depressive'. In one such case, a patient who worked at a large sanatorium as a Night Superintendent, had complained to the Staff Doctor of overwhelming tiredness, constant generalized pain and a feeling of coldness. She was diagnosed as a manic-depressive and compulsorily detained under the relevant section of the Mental Health Act. The fact that she was a permanent night staff member from choice, and was middle aged, was seen as sufficient ground for the diagnosis. On admission she was observed to be overweight, with thin hair, extremely dry skin, and a marked tendency to fall asleep even when in conversation. Her temperature was subnormal and her pulse very slow. A nuclear medicine test for thyroid function, (Iodine uptake I 131 Test) showed marked thyroid deficiency which was treated with oral thyroid tablets daily. In a short time, she was discharged fit and well, to resume her normal life on a maintenance dose of thyroid tablets for the rest of her life. She was not, nor had she ever been psychotic, yet, because of the misdiagnosis, instead of being a voluntary patient in a general hospital, she had been labelled as psychotic, legally deprived of her freedom and human rights, and denied social justice. She very nearly lost her position at the sanatorium, which would have affected her retirement future catastrophically.

16. O'Sullivan has commented that, despite the findings being dated, in 1980 numbers of patients were still being listed in psychiatric hospitals as 'No Psychiatric Diagnosis' (1981:10).

17. 'Intuition' is defined by Lacey as:

Originally an alleged relation analogous to visualising, between mind and something abstract, and so not accessible to the senses. (in Honderich, 1995: 415)

Intuition is often interpreted in medicine as an 'educated hunch', which may be applied to the hypothesis and then tested and modified, using a medical model.

18. Richard Taylor, in his capacity as both a psychiatrist and active member of the Doctors' Reform Society in Australia, was disturbed enough to write in Medicine Out of Control, that he was dismayed at the apparently inexorable evolution of his profession from one concerned with caring for human beings into an empire rapidly developing its own intellectual and economic momentum (1979:224).

19. Human rights' activists have indeed gone further and labelled all psychoactive drug therapy as "the liquid cosh." (Melville A. and Johnson C. 1983: 158)

20. Trethowan, in his article: "Pills for Personal Problems", acknowledged the contribution of psychoactive drugs to the management of psychoses, but stated that their use in the relief of neurotic symptoms, by suppressing the underlying conflicts, might be self-defeating in the long run (in British Medical Journal, 1975, 3:749).

21. Aristotle in his Nicomachean Ethics, presented the first formal readings in ethics, and expressed a totally opposite view to Ayer. Aristotle described in Ethics and Politics, how to live well, individually and socially. (Nicomachean Ethics, Book 1, trans. Ross, 1925, Chapters 1-3). Fagothey has commented that:

Aristotle has no illusions on the kind of precision to be sought for in ethics; it is proportioned to the nature of the subject matter, the almost infinitely varied activities of the unpredictable human being. He (Aristotle) starts with the way human beings actually do live, expects in the learner some

experience, maturity, and good will, and thus seeks to help him find the aim of human life and the means to achieve it. He who does so has found wisdom. (1972:1)

Ayer, however, expresses the diametrically opposite view to Aristotle. In his early book: Language, Truth and Logic, (1952), Ayer presents a position which he modified in later years, but is, nevertheless, a clear expose of his belief that ethics has nothing to talk about. Ayer challenges the possibility of establishing the truth of ethical statements and of giving them cognitive meaning (1952, Chapter 6:102-113). The two philosophers illustrate the two opposite states of mind on the knowledge of value. Fagothey has stated that whereas Aristotle opens the door to ethical knowledge, although it is uncertain in the beginning whether it will only be an empty room, Ayer closes and locks the door behind him, because his analysis of language confirms for him the rumour, 'that there can be nothing there but the shadows we project'. (Fagothey, 1972:2)

22. Postmodernists, as well as Nietzsche, are anti-Enlightenment in their outlook, stating that there is no one way of defining reason: all choices are of equal value (Schacht in Honderich, 1995:619-623). Essentially, Postmodernism is the philosophical view embracing a form of scepticism, which itself sets out to undermine other philosophical views which either claim to possess ultimate truth, or have the criteria to determine ultimate truth (Sim, 1997:3). Such a philosophical theory is described as antifoundational; that is, it disputes and rejects Enlightenment discourse.

23. In his Report, Justice McClemens included the following observations:

The stench in the air of the dormitory on the first floor (of Male Ward 2) was nauseating. Water was running from the flushing device in the urinal over part of the floor. There were no seats on the WC pans nor were there provisions made for paper holders for toilet purposes. The doors had been removed or torn off; this was made apparent by an area to the side of the wall that indicated where the doors had been. Flies were walking over the WC pans, one pan being approximately 11 feet from the nearest bed...Off this dormitory are a number of unfurnished rooms which have only mattresses on the floor and no other furniture... The floor of the dormitory is entirely of barewood and at one end of it is a small room in which there are four beds. This room was once a bathroom and is lined with delapidated tiles and has a severely pitted floor. One of these four beds was about three inches out of alignment because one of its legs was resting in a hole in the floor. (Mr. Justice McClemens, 1961:69)

Again:

In Female Ward 3, I found evidence of gross overcrowding; so bad that the head of one bed was less than 18 inches from the pan of a WC. The division between that WC and the patient's bed was a low one, less than 5 feet high. (1961:73)

Evidence provided by a mother was reported:

It had been raining and we had to sit outside in a terrible smell- any public latrine doesn't smell as bad as it- and we had to sit there and talk..with feet in puddles and disinfectant. I was watching poor mothers feed their loved ones with little things they brought out to them...There was nowhere for the poor patients to keep the food you bring them, so they had to gobble it up there and then whether it made them well or not. I did say to a nurse in Ward 5 "Here are some little things for my son he can eat during the week." He said: "He'd better eat it now then." I said: "Hasn't he got anywhere to eat it?" He said: "There is nowhere here. If he takes my advice, he'll eat it now." (1961:78)

Inspector Beavers of the Department of Public Health visited the kitchen department of Callan Park on 20, 21 and 22 December 1960, in conjunction with the forthcoming Report and commented:

...I saw pigeons and starlings in the kitchen. I have seen a pigeon perched over a dixie in the diet kitchen under circumstances where its droppings could enter the food. I have seen birds feeding on an open boiler containing stew...(and) feeding on cakes waiting to be taken to the wards, with

nothing to prevent the birds' excreta falling on the cake...(and) feeding on vegetables prepared for cooking. (1961:97)

With regard to the importance of medical and nursing staff, the Report stated: that there was a marked shortage of psychiatrists and nurses due in great measure to the lack of prestige and nature of the work:

The psychiatrist lacks the prestige (even among the medical profession) as belonging to a specialty which lacks the prestige, the status and the privileges of practice in many other branches of medicine, and in many instances does not lead to the same rewards financially....Often they are deprived of many of the amenities available to a popular non-specialist practitioner in general practice...They do not attain to the income nor achieve the status in the eyes of the community of the skilful general surgeon in private practice. (1961:114)

Of psychiatric nursing:

It requires qualities of kindness, patience, forbearance and understanding, which many people lack. Tranquillising drugs have greatly minimised the problem of attack by aggressive patients, (but they still have to deal with) the noisy, the talkative, the dirty, the unco-operative, and the irritating patient. They have to work with their patients in a degree of intimacy that I did not believe possible until I had seen it –the bathing and drying down of the elderly patient by the nurse, the cutting of finger and toe nails...the cleaning up of the patient after the use of bowels...the closeness of relations give rise to problems that do not exist...in a general hospital. (1961:116)

While there were many examples of kindness and careful attention by the nursing staff, cases of cruelty on the part of some of the male nurses were reported to the Royal Commission:

1).On 10th March, 1959, Dr. Sandes found a nurse holding a patient with his arms behind his back and Nurse Banks in front of him punching him in the stomach.

At the subsequent enquiry, Nurse Melville who had been a witness was evasive and protective of the nurses involved, so that it was impossible to lay charges.

2). Nurse Bettwell hit a patient with his fist in the back of the neck. Dr. Kovacic and...Mr. Palmer (the charge nurse) were present. (They) stopped him... and Dr. Kovacic ...went straight to Dr. Wooster and informed him of the incident, only to be told to go back to the ward and discuss it with the charge nurse. Mr. Palmer said: "No, I have not seen anything at all." (1961:128)

In view of the fact that Justice Mc Clemens and others involved in the enquiry had observed and obtained information concerning psychiatric hospitals internationally, this evidence from the Report is included in some detail, in order to emphasise that in a time of pharmaceutical revolution, an archaic system of custodial and repressive care still existed in asylumdom, of which Callan Park was an example.

24. The Declaration was accepted to serve as a guide for the entire medical world at the Eighteenth World Medical Assembly in June, 1964 by the World Medical Association (Haring, 1972:299).

25. An example is that of the patient in a cardiac unit who announces that he feels just as he did before suffering a recent heart attack, only to be told that he is just being anxious. The electrocardiograph (ECG.) monitoring his condition is showing normal rhythm. In fact, there is an outpouring of adrenalin immediately before the onset of a heart attack, which produces a feeling of dread and foreboding. If the patient's description is listened to, instead of considering the ECG as 'evidence-based', and appropriate measures are taken, the attack may well be prevented. Otherwise in a matter of minutes it will be displayed on the ECG graph.

26. Psychiatry with a quasi-scientific background, together with an expert use of drug therapy, remains above all a specialization which uses the doctor-patient relationship as an essential arm to its therapy (Shorter, 1997:326-327). Kelleher *et al* have written that a satisfactory average psychiatric consultation takes over forty minutes (in Mental Health, United States, 1994:149-164). Shorter states that during this consultation,

the psychiatrist is able to do what competitors such as neurologists and psychologists cannot do: s/he offers psychotherapy and medication (Shorter, 1997:326-327). This combination is seen by Shorter, Bloch and Singh, as providing the most effective of all approaches in dealing with psychiatric disorders (Shorter, 1997:327, Bloch and Singh, 1997:297-298). This implies a partnership between doctor and patient, and was one of the changes which distinguished psychiatry's attitudinal shift from pre World War II paternalism to its post Second World War partnership with the mentally ill. It was a partnership in which more and more, patients/clients would be able to receive drug therapy in their own homes after a short period in hospital to treat the acute phase.

27. Shorter has further suggested that the outpouring of anger against the psychiatric profession which was to occur during the 1960s was the result, partly, of the alienation in the doctor-patient relationship, due to the doctors neglecting the psychological side of their relationship with their patients (1997:272). To write out a prescription after obtaining a specimen of blood and then to cursorily dismiss a patient without listening to his/her full story, might seem an economy of time, but could leave a patient feeling frustrated, undervalued and misunderstood. It left many psychiatrists vulnerable to the attack on them mounted by members of the anti-psychiatry movement.

28. Many health professionals embraced the postmodern theory that medical discourse must be questioned by examining and considering suspect: "the truths inherent in the dominant medical discourse." (Eade and Bradshaw, 1995:61)

Speedy believes that such an analysis ultimately results in a reconstruction of a more meaningful discourse to those who are providing the critical analysis. The dominant discourse creates a reality; by definition it has constructed it (Speedy, 1999:6).

There was often an ideological clash between other health professionals. For example, between therapists and psychiatric nurses whose hospital based training was seen as contributing to paternalistic behaviour towards clients by maintaining a custodial role. Therapists with some insight into post Nietzschean and postmodernism thinking, believed the language used in the dominant discourse of psychiatric nursing created a reality that was paternalistic. Echoing Saussure, Speedy has asserted that meaning and value are expressed through, and created by language (1991:61). The meaning and value of the language of psychiatry from which nurses had gained their knowledge and clinical experience was seen by Speedy to be medical, authoritative, male defined and powerful, aimed at legitimizing political authority, maintaining the *status quo* and constraining behaviour, attitudes and beliefs within defined acceptable sex roles (1999: 61).

Speedy's analysis gives language a pre-eminence that may not be entirely warranted. Human action, for example, may embody meaning and value to a greater extent. Albert Jonsen SJ, has described two patterns of ideas associated with responsibility in moral philosophy (1968:chapter 3:35-70). These ideas may be referred to as the 'judge's problem' and the 'agent's problem'. Together, this pattern of ideas may be termed the 'pattern of appropriation' or the action of 'being responsible'. Jonsen has stated that this terminology "...is largely concerned with the problem of self identity and identity between oneself and one's actions." (1968:35-70)

Adapting Aristotle's teaching, (Nicomachean Ethics, Book III, Chapters1-5), the psychiatric nurse working in an institutional setting, may not be submitting to an authoritative male defined medical model. S/he may be

identifying with the patient's perceived needs, without any linguistic guidelines or direction from the psychiatric authority.

Sontag, writing in her role as a feminist and Postmodernist has stated:

"Nothing is more punitive than to give a disease a meaning; that meaning being invariably a moralistic one." (1990: 58)

This statement is challenged because as a genus-term (D'Arcy, 1963:2-26) applied to behaviour, giving a disease meaning may not be punitive but constructive, and assisting in rehabilitation.

29. Praxis, paraphrasing Habermas's Theory and Practice (1974), is a combining form meaning in the medical world: "a therapeutic treatment involving a specified method". (Mosby, 1990:951) The term is used in nursing education to describe theoretical information concerning a specific condition, which is related to the clinical practice undertaken by the nurse, and then, using the scientific method, re-checking with theory and re-evaluating outcomes of treatment.

30. In illustration of this statement:

In 1995, a distressing occurrence was reported of a mother whose youngest son suffered severely from schizophrenia., but his illness was controlled with drug therapy. The parents were estranged, and at times, the father would invite the son to visit him for a prolonged holiday. During these periods, the father did not supervise the administration of medication, and, as the young man felt well when in remission, he himself did not take any of the necessary drugs. As soon as the son's health began to deteriorate, he would be immediately sent back to the mother to try and remedy the situation. On the occasion in question, the son had arrived home unexpectedly, was extremely agitated and his mental condition was deteriorating rapidly. The mother was enjoying tea with a visitor who became alarmed at his apparently threatening manner, and notified the police, who removed him to the psychiatric wing of the local general hospital.

All this had happened quickly, so that the mother had no opportunity to collect things such as toiletries he might need. The next day she arrived at the hospital with his requirements, and was told he did not wish to see her. (This does occur often in such situations). The mother asked if the authorities had taken care of a very valuable Rolex gold watch he was wearing when transferred to hospital, and also, about his other belongings; cheque book, credit card and cash (he always travelled with about \$500.00 in his wallet).

The Social Worker told the mother firmly that he was of age, could make his own decisions, and who he wished to care for his possessions would be his own 'choice.' Every day for a week the mother had visited, and been told by different members of the health team the same story. He did not wish to see her, and what happened to his belongings was for him to choose. Likewise, she could not leave clean clothing. Should he wish to change his nightwear or not, was for him to decide!

At the end of the week, unknown to the mother, he was transferred under the Mental Health Act of that State to a psychiatric hospital, which on contacting the mother, invited her to come down and see her son, and re-assured her that his valuable belongings (for which they believed he was unable to be responsible in his present condition) had been collected up, and were now resting in the patients' safe in the accountant's office.

It is demonstrated from the above, that some members of the health team working within a psychiatric milieu, did not understand the parameters of a patient's ability or otherwise to be responsible.

31. That the move by NSW. was significant for psychiatric health care, may be instanced by the fact that psychiatric nursing was already an integral part of the General Nursing Register in that State. The pre-amble agreed to by the interdepartmental committees and nursing representatives stated that:

"Graduates from these undergraduate studies would be generalists, having the beginning competencies in all basic aspects of nursing, including psychiatric nursing." (Interdepartmental Committee Meeting May, 1983)

Because NSW provided the greatest numbers of qualified nurses and qualified Nurse Educators in Australia, this had a domino effect on the other States and Territories. Following several inter-departmental, State/Federal and Australian Health Ministers Meetings (AHMAC), the then Prime Minister issued an agreement to transfer all nurse education to the tertiary sector, at an interim speed to be determined by each State/Territory, but to be completed by the end of 1986. Australia remains the only one of the three English speaking countries under scrutiny, (the others being UK and USA) to have made such a dramatic and total move with seemingly little discord.

32. Scepticism essentially intends to undermine and refute other philosophical theories which claim to be in possession of truth or of criteria which determine truth (Sim, 1998:3). Some forms of scepticism prevent us from making too strong claims about what we know. Scepticism also wants to claim that our knowledge cannot be certain: this claim is basically true.

Scepticism questions our ability to obtain knowledge. It emerged as a philosophical theory during the Hellenistic age, challenging the claims of scientists and philosophers to examine the nature of reality. Plato is stated to have bequeathed a vague philosophical view of 'reality', while Socrates emphasized the importance of knowledge that was grounded in awareness of our own ignorance (Hookway in Honderich, 1995:797). Plato explained how such knowledge was possible, and suggested it was necessary for the exercise of virtue. In the fifteenth century, it was used in the intellectual battles that ensued between differing theological positions, and challenges being mounted by the modern attitude to science which was influencing attitudes to the world (Hookway in Honderich, 1995:797).

During the sixteenth century, Erasmus used earlier sceptical themes to defend the Catholic Church against Reformation ideas by arguing that we should conform passively to existing practices since no defensible criterion of truth was available which could be trusted when we try to criticize them. Pyrrho of Elis (c 360-c270 BC) is regarded as the founder of the school of scepticism, a school of thought which challenged the beliefs of 'dogmatists'. Luther and his followers used the Pyrrhonist prescriptions which offered conflicting recommendations. Luther, using these recommendations, insisted that conformity to prevailing customs is too tepid a style of religious observance to meet the demands of Christianity (Hookway. In Honderich 1997:797). Epistemological scepticism came to be associated with religious discourse. Once sceptical arguments were acknowledged, they could not easily be prevented from spreading doubts to all areas of life including the new sciences.

Hookway suggests that many thinkers date the birth of 'modern philosophy' from the time when Descartes identified the defeat of scepticism as the first task of philosophy (in Honderich, 1997:797). Descartes set out to provide secure foundations for science, metaphysics and religion by defeating scepticism by legitimately appealing to a criterion that would enable him to do so. He attempted to provide such a criterion in his Meditations (1641) but was not considered by his contemporaries to have been wholly successful. Descartes nevertheless transformed thought about scepticism, by encouraging a sense of the power of scepticism. Among those influenced by such assertions was John Locke, who claimed that the study of nature yields *opinion* rather than *knowledge* (Hookway in Honderich, 1995:797-798). Nevertheless, Locke demonstrated his belief in An Essay concerning Human Understanding, (1690) like Newton, that knowledge could only be obtained through the senses (Woolhouse in Honderich, 1995: 493-496).

Philosophers such as Thomas Reid (1710-96) and G.E. Moore (1873-1958) have insisted that demanding reasons and challenging their adequacy can distort the structure of justification (Hookway in Honderich, 1995:798). They belong to a group of 'commonsense' philosophers who, from the sixteenth century onwards, have responded to sceptical challenges by denouncing them as absurd strategies which are not to be taken seriously (Hookway in Honderich, 1995: 798). They give as an example of their stance, that the belief that there is an external world, is not supported by particular arguments or reasons: it has stood the test of time, and 'everything counts for it, nothing counts against it'. (Hookway in Honderich, 1995:798)

Kant in contrast, has argued that sceptics posed the wrong question. We do possess knowledge, and the philosophical task is only to explain how this is possible. According to Kant, sceptical arguments may challenge our ability to know about things as they are in themselves, but since our aim in inquiry is to develop knowledge of a world which is shaped by our cognitive constitution, these arguments do not touch the only kind of knowledge which matters to us (Allison in Honderich, 1995:435-438). Kant was responding in his Critique of Pure Reason to Hume's sceptical arguments about what we can claim to know.

33. In Chapter Two, it was explained that deconstruction is opposed to the system-building of structuralism with which de Saussure, the linguist, is closely connected. (See Chapter Two, **fn. 65**). Derrida contended that philosophical thought in the Western World is based on the premise that the full meaning of a word is present in the speaker's mind, and that the meaning is communicated to the listener without slippage. Derrida called this the 'metaphysics of presence', and argued that it was an illusion that meaning could be conveyed completely (Sim, 1998:6). The emphasis on difference and the intent of deconstructionism is characteristic of postmodernism, which may be seen as sharing in the critique of Enlightenment values and truth claims by those of liberal communitarian thinking (Norris in Honderich, 1995:708).

34. Others who by coincidence were all filled with the same idea at that time, included Thomas Szasz, a psychoanalyst, who published in 1960 The Myth of Mental Illness, in which he called the notion of psychiatric illness "scientifically worthless and socially harmful." (1960:xiii)

35. Laing believed the schizophrenic was 'playing at being mad,' and in fact demonstrated a gifted mind-a sane response to a mad society (Laing, 1961). Shorter reports that Laing became the chief investigator in the schizophrenic research unit at the Tavistock Clinic (1997:276).

36. In this study, a group of eight supposedly 'normal' medical postgraduate students of Rosenhan's presented for admission as schizophrenics at different psychiatric hospitals located in five different states in USA. All were admitted on the recommendation of their medical practitioners, without the knowledge of the psychiatric hospital authorities being aware of the sham. Once in hospital they reverted to their normal behaviour. Despite their 'sane' behaviour after admission, and their assertions that they were qualified doctors, they were never detected by the staff who labelled the students as suffering from 'delusions of grandeur,' and considered that 'note taking' and 'diary writing' could fit into the bizarre behaviour category. The 'fakes,' however, were recognised by other 'real' inmates who accused the pseudo-patients of being either journalists or college professors, 'checking up' on hospital treatment. The conclusions reached by Rosenhan were that practically anyone, sane or insane, could gain admission to a psychiatric hospital, and once admitted, the patient's behaviour would be measured against the diagnosis.

37. If people classified as 'mentally ill' were now to be re-classified as 'deviants', it was inconceivable that their liberty could be taken away and they could be denied the same human rights as any other citizen. The

desire to live in the community, perhaps being able to find employment, to indulge in sport and recreational activities with other 'normal' citizens were all contained within the conviction that the mentally ill should be part of the community. In this sense, the anti-psychiatry movement may be said to have promoted the concepts of social justice and human rights, and insured that society focused on the needs of this disadvantaged group of the community.

38. The cultural revolution in the Western World was played out during the 1960s in social contradictions. After World War II, there had been greater recognition of workers' and women's rights, and dismantling of imperialism, as well as granting of freedom to many countries, especially in Africa and Asia. As time passed, health and social services, together with better educational facilities were taken for granted by the younger generation who had never known the privations of the Great Depression. At the same time, many people did not seem to prosper, despite the State Benefits offered. These were the semi/unskilled workers, social inadequates, and the marginalized such as the mentally ill and racial minorities, as well as those living in derelict inner city suburbs (Charles, 1998:190).

Among those highly critical of the entire bureaucratic procedure was the Left Wing intellectual sector, led in France by Sartre who although demonstrating sympathy with Marxism, refused to collaborate with Stalinism. In his ambivalence, Sartre was highly critical of bourgeois society; Sartre saw the working classes as having been corrupted and having abandoned their true socialist vocation (Charles, 1998:190). Albert Camus (1913-1960) who was less political than Sartre, but equally concerned with questions of responsibility, innocence and guilt when confronted with tragedy, regarded commitment as a necessary evil (Solomon in Honderich, 1995:118). Camus was realistic about Stalin's crimes, finding them difficult to explain away. Both these philosophers had a negative effect on the established order (Charles, 1998:190).

In Germany, immediate post war years were occupied with the economic miracle and overcoming prejudice left by the Nazi connections. By the 1970s, the Baaden-Meinhof gang consisting of university and middle-class members emerged spreading a nihilist doctrine (Charles, 1998: 191).

In Britain, there was less violence, and ideological differences were centred on the 'angry young men' of the Theatre: writers and dramatists, such as John Osborne and Kingsley Amis (Charles, 1998:191).

In USA, the situation was different again, with the virulent anti-communism of McCarthy prominent in the 1950s, followed by the Civil Rights movement which began in 1955, and became a national movement under Martin Luther King (Jones, 1955: 553ff).

In Australia, under Robert Menzies, and in USA, the late 1960s and early 1970s saw mass demonstrations against the Viet Nam War, with Moratorium marches and Anti-Apartheid demonstrations. The disturbances seen in Europe, however, were not in evidence in Australia.

39. Researchers had been working since the 1920s on fertilization theories concerning female reproductive hormones: those which promoted fertilization and those which inhibited conception. The Pill contains oestrogen (produced by the ripened follicle) and progesterone (produced from the remains of the follicle- the corpus luteum), which are secreted by the ovary after ovulation has taken place. The mechanics by which these hormones interact was not understood until the 1960s. The Pill, by operating in reverse, extends 'negative feedback' on the pituitary gland, thereby stopping the secretion of the two hormones which are concerned with the stimulation of ovulation: Follicle Stimulating Hormone (FSH) and Luteinizing Hormone (LH). The Pill exploited the implications of 'negative feedback'. (J.K. Butler, 'Chemical results with Human

Gonadotrophics in Annovulation'. Postgraduate Medical Journal 1972:27-32; and B. Luenfield: 'Historic aspects of Gonadotrophins in the Induction of Ovulation' in Ovulation ed. Robert Greenblatt (Philadelphia PA Lippincott,1966).

40. In 1988, Dr. Norman Ford, a noted Catholic priest and geneticist, wrote a treatise on the history, philosophy and science of the conception of the human individual entitled When did I begin? Dr. Ford was determined to answer vexed questions on the basis of knowledge. As long as there was a possibility of two embryos or more developing from the loose conglomeration of cells that result from the fertilized egg, Dr. Ford was not prepared to regard this conglomeration as a single entity. He, therefore, cannot regard the pre-fourteen day embryo as a human individual. The answer therefore, to Dr. Ford's question as to when did we begin is: 'fifteen or so days from fertilization' (Foreword).

On October 11th 1962, the first meeting of the Second Vatican Council was convened. The Pope had called together all the bishops of the Catholic Church throughout the World, to meet in Rome and consider the Church's position in the modern world, together with the world-wide problems besetting society. One serious problem the Church had to grapple with was the problem of fertility, and the role of artificial contraception in society today. John XXIII died before the Council's final deliberations, and his successor, Paul VI, contrary to the advice given to him by leading embryologists, geneticists, biologists and obstetricians from around the world, produced in the Encyclical Letter *Humanae Vitae*, (1968), a definitive statement that:

"Methods of regulating births should be in accord with God's law authentically interpreted by the Church." (3rd edition,1981: Para. 14)

All types of contraception were rejected, including 'the Pill'. Many lay members of the Catholic Church, having been encouraged by the teaching of the Council to recognize and exercise the supremacy of conscience, did just that, and left the active membership of the Church, dissenting from Pope Paul's decree.

Both Dr. Ford's conclusions and the teaching of Paul VI have to be kept in mind when counselling a severely mentally ill client with regard to matrimonial and family aspirations.

41. Early feminism was essentially, regardless of which ever side of the Enlightenment Postmodernist argument was adhered to, aiming to achieve equality for women in all the areas from which they were believed to have been previously excluded, including rational thought and intellectual discourse. Here however, the early feminist struck a problem. It soon became clear that there was more to be considered than just expanding existing theories. Women's occlusion was not an:

"...accidental omission but a fundamental structuring principle of all patriarchal discourses." (Thornham in Sim, 1998:43)

Within the ranks of feminism, two opposite schools of thought emerged. In the words of Sabina Lovibond:

"(Feminism) should persist in seeing itself as a component or offshoot of Enlightenment modernism, rather than as one more 'exciting' feature...in a postmodern social landscape." (In Docherty 1993, cited in Sim, 1998:41)

An opposite viewpoint was expressed by Jane Flax:

"Despite an understandable attraction to the (apparently) logical, orderly world of the Enlightenment, feminist theory more properly belongs in the terrain of postmodern philosophy." (Nicholson,1990 in Sim, 1998:41)

Simone de Beauvoir, (1908-1986), the French existentialist philosopher, is known for her life-long relationship with Jean-Paul Sartre. Each influenced the other significantly in their thinking and writings. Sartre's Hegel-derived model of the struggle between subjective consciousness, with each seeking to be the looker rather than the looked at, is adapted by de Beauvoir to describe male-female relations. Simone de Beauvoir writing from an existentialist point of view, stated that in Western thought, woman had always been represented as *Other* confirming man's identity as *Self*.

"To play at being a man, will be for (woman) a source of frustration, but to play at being a woman is also a delusion: to be a woman would mean to be the object-the *Other* and the *Other* nevertheless remains subject in the midst of her resignation." (1949: Chapter 2)

However, if de Beauvoir's theory is accepted and feminists attempt to construct a universal 'essential' *woman* as subject and object of their own thought, that figure, states Thornham, will be as partial as historically contingent and as exclusionary as her male counterpart (in Sim, 1998:43). Using this argument, Thornham declares with many feminists, that feminism needs to embrace differences between women, and accept a position of partial knowledge (in Sim, 1998:43). If this position is taken, surely Thornham is stating that feminism must move away from its perceived Enlightenment beginnings and stand with an apparently more congruent postmodernist theory (Creed, 1983 in Sim, 1998:44). This is a problematic stance. Postmodernism promotes an egotistic, pluralistic criticism of Enlightenment values and truth. If Enlightenment values are replaced with postmodernism, it would seem that this surely prepares society for the introduction of economic rationalism and cold selfishness.

42. John Maynard Keynes (1883-1946), believed that full employment could be achieved only if governments and central banks deliberately encouraged investment in new capital goods while maintaining a cheap money policy and public investment during a recession (Keynes, 1936). Keynes theory had a profound effect on on the Roosevelt policies of the 'New Deal' which assisted with the economic recovery in USA, and later upon war finance. Keynes was the chief British representative at Bretton Woods in 1944, where plans for the International Monetary Fund and the International Bank to stabilize exchanges and assist international economic recovery were worked out (Robinson in The Economic Journal Vol. LVIII, No. 225, March, 1947).

43. The governments' debts grew to the point in the Western countries where a fiscal crisis of state occurred. The central point of this crisis was that the government in question was obliged to raise new taxes to repay loans incurred in previous deficits. These attempts were unpopular and often unsuccessful. Consequently, the budget deficit grew, and the fiscal crisis deepened.

The Western nations, including Australia, were in a dilemma. If the state increases individual taxation markedly, it faces a revolt by the people, as happened in England over the Poll Tax. People may also decide to spend less on goods and services, thus causing a drop in consumer demand, with serious consequences to sections of the economy. Should the State impose taxes on companies beyond a certain limit, the companies will react by taking their investments and monies elsewhere, seriously affecting the market economy. Should the companies decide to remain within a country, they might alternatively, rationalize by reducing the number of workers employed, or substituting machines for workers, thereby maintaining profit levels but reducing workers' incomes (Theophanous, 1994:149). The State, however, cannot simply remove those welfare and social security measures which people have become used to having in place, without losing public support: it is such Draconian moves which may be a causative factor in inciting revolution. The unrest in the former

USSR territories since the collapse of the Berlin Wall and the rise of the new Western style economies behind the former Iron Curtain, bear witness to this fact.

44. Nozick's anti-Rawlsian sentiments would be echoed by economic rationalists such as Milton Friedman, who already a well known economist in USA, became an authoritative figure in Europe and Australia, and whose economic rationalism would set the economic agenda for the future in each of those countries.

45. Ayn Rand crystallized the thinking of the 1980s, by urging the formation of minimalist government. Herself a libertarian, of similar thinking to Nozick, Ayn Rand has rejected the metaphysics of Natural Law, and distanced herself from Classical Utilitarianism as well as from Nietzschean theories. She has declared herself a standard bearer for objectivist ethics (1964:13-39). She explains objectivist ethics as having a social principle:

"Man must live for his own sake, neither sacrificing himself to others nor sacrificing others to himself. To live for his own sake means that *the achievement of his own happiness is man's highest moral purpose.*" (1964:30) (*Italics in the original*)

Supporting Capitalism, Ayn Rand describes it as

"Full, uncontrolled, unregulated laissez faire...with a separation of State and economics." (1964:30)

In describing ethical objectives, Hepburn has explained how it states that moral judgments can be rationally defensible, true or false, and that there are rational procedural tests for identifying impermissible actions, or that moral values exist independently of the feeling-states of individuals at particular times (in Honderich, 1995: 632-633).

In decrying faith, Ayn Rand describes it as:

"A malignancy that no system can tolerate with impunity...man's need of self-esteem entails the need for a sense of control over reality -but no control is possible in a universe which contains the supernatural, the miraculous and the causeless." (1964:42-43)

The value system Ayn Rand holds to promotes and encourages pride and selfishness:

"Pride is one's response to power to achieve values, the pleasures are taken in one's own efficiency." (1964:46)

To Ayn Rand, self-sacrifice is mindless, and in extolling selfishness, Ayn Rand sees this as

"Man's right-and-need-to-act on his own judgment." (1964: 45-46)

This totally self-centred value system allows for no compassionate consideration of the disadvantaged such as the mentally ill, and has no room for social justice as a human right at all.

46. By this is meant that voters, looking for a remedy to their conditions, listen to the Opposition and to other political parties, including the Independents, in the hope that what they are promising may be better than the current system, and also register protest against the current regime. When they have become disillusioned after perhaps one or two periods of the Party's government, the voters turn back to the previous one or the other. The continual 'seesaw' helps to defuse the danger of revolution.

47. Regrettably, the effects of economic rationalist policy, together with the subtle use of language, manipulation of the media and the presence of relative values in Australian society, are reflected in a shift of the Federal Government's policy towards refugees. Separate groups: refugees, asylum seekers and 'boat

people' all grouped together under the incorrect title of 'refugees', were seen to be shamelessly exploited during the November 2001 Federal Election. Propaganda brought to the fore many people's ignorance and fear of the unknown 'foreigners', and alleged possible disruption of a settled way of Australian life. Former Labour Minister for Immigration, Ian MacPhee, speaking at the launch of the Catholic Church's Human Rights' Register in Melbourne, 10th December, 2001, described the current Federal Liberal Government as:

The most repressive government in our history...With widening gaps between rich and poor, it is easy...to build resentment against refugees while calling them queue jumpers...With 21 million refugees in the world, our paltry intake of 8,000 and another 4,000 special humanitarian cases is absurd and insulting. (Report on SBS News, 10th December, 2001, and "The Advocate", Tasmania, 11th December, 2001)

48. There are, according to Theophanous, six factors influencing this international reality of the nature of globalization:

- A rapid growth of the development of multinational corporations. These corporations often control the bulk of goods and services productions throughout the world, where they tend to monopolise power and reduce competition, thus dominating the market place, sometimes with the support of national governments.
- Intense competition between different national bodies to attract capital investment to their countries. This often involves subsidies and grants to establish the initial stages of production, even by attempting to reduce workers' wages, and employers' contributions to health, superannuation and training arrangements.
- An accelerated development of the nation's natural resources which may lead to a plundering of those resources.
- Acceleration of the replacement of workers by machines, including sophisticated computer technology.
- Massive increase in world wide public communications systems which may have a negative but also a positive element. If control is wrested by one individual in an effort to gain power, this can be dangerous.
- Instability in the international monetary system, making it vulnerable to the vagaries of financial dealers, and their integrity or otherwise (Theophanous,1994:156).

49. Casemix describes a method used to determine public hospital funding. In Australia throughout the 1990s, public hospital resourcing has undergone extensive reform through the introduction of this methodology. Under casemix, the number of episodes of care weighted by indices based on DRGs, determines the majority part of the public hospitals funding (Human Services, Victoria, 1994: Introduction).

"The theory behind casemix is that the individual episodes of care can be divided into clinically consistent DRGs on the basis of that the total quantity of resources required to treat each care episode within the group is, on average, roughly equal." (Health Services, Victoria,1994:51)

Efforts are being made at a national level to develop a measure equivalent to the DRGs used in acute hospitals, but it is reported by the Mental Health Branch in Victoria, that this might take many years (1994:51). Despite the obvious drawbacks to using casemix, Human Services, Victoria, together with other States of the Commonwealth, announced that many of the same objectives as are achieved by casemix were to be incorporated into new funding formulae for mental health services (1994:51).

CHAPTER FIVE
THE CHALLENGES OF SOCIAL JUSTICE AND HUMAN RIGHTS.
MEETING THE NEEDS OF THE MENTALLY ILL IN A CLIMATE OF
DE-INSTITUTIONALIZATION.

1.Introduction.

This thesis traces the history of society's treatment of the mentally ill throughout the past two hundred years, against a background of philosophical, social, political, economic and medical changes in the Western world. It is based on the social justice principles of Natural Law as described by John Finnis (1980), and explained in Chapter Two. It contends that the mentally ill have been disadvantaged, by depriving them of participation in the common good, and ignoring their rights to be treated as all other citizens. By so doing, it is argued that the community itself is disadvantaged, being left the poorer for not having included the disadvantaged as receivers of unconditional love and, consequently, of the common good.

Throughout the thesis it contends that utilitarian, liberal, libertarian views are not adequate in enabling the marginalized voices to be heard. During the enormous social changes occurring within the nineteenth century, social justice was not evident in the treatment offered to the mentally ill in England, USA, or Australia, although from this distance in time, it is impossible to determine just how altruistic were the motives of the would-be reformers. That there was a desire to improve the lot of the mentally ill by affording them 'asylum' is possible. That a re-shaping of the social system of England might have been attempted, so as to improve financially, and socially, the lot of the marginalized people does not seem to have entered the social conscience (Scull, 1993:143-146). Once large numbers of the mentally ill had overwhelmed plans for their rehabilitation at the beginning of the nineteenth century, there seems to have been a resigned acceptance that no other course save asylumdom was feasible.

The end result of institutionalization, what Scull has named 'the warehousing of the insane' (1993: 143-146), may be seen to have been an outcome of consequentialist claims where the act is chosen according to rule-utilitarianism, which, it is believed, will yield the greatest net good on the whole and in the long run (Finnis,1980:112). In relation to the mentally ill, with the then prevailing Classical Utilitarian view influencing bureaucracy, it was calculated by the governments of England, USA, and of Australia, that the greatest

good for the majority of the community would be best served by institutionalizing the mentally ill, providing a net result of law and order in society. This theory Finnis contends to be unreasonable and unsustainable, in that each of the aspects of basic human well-being is equally important: none is more important than the other, and to try to calculate or maximize good is irrational (Finnis, 1980:112). Finnis's theory of Natural Law and Natural Rights which was introduced in Chapter Two will be used throughout this chapter, to demonstrate a different approach to a marginalized group of people who have equal rights to be treated with justice, fairness and compassion as every other member of the community in which they find themselves.

The social justice principles and Natural Law theory as described by John Finnis (1980), will be used in demonstrations of a practical application of Natural Law to mental health care in accordance with Papal Encyclicals of the past century. It will be argued that human rights talk, so prevalent since the end of World War II, is inadequate in ensuring that mutual responsibilities and obligations are met by all members of the community toward and by the mentally ill as is possible. Natural Law, which recognizes that every human being has a right to share in the common good provides a more robust justification for increased social justice for the marginalized, especially the mentally ill.

The Natural Law model which is based on Finnis's theory of Natural Law and Natural Rights, and has been described in Chapter Two, will be applied to the outcome of two influential national Reports on mental health care in Australia. These Reports focused on human rights and social justice, and consideration will be given as to whether the prevalence of human rights talk as implemented in the *Declaration of Human Rights*, has been sufficient to guarantee social justice for such a disempowered group. One inquiry, political and consultative, was commenced in 1991 by the Australian Health Ministers Advisory Council (AHMAC). The other, a fact-finding inquiry at grass roots level, was commenced in 1990 by the then Commissioner for Human Rights, Mr. Brian Burdekin (*Report of the National Enquiry into the Human Rights of People with Mental Illness, 1993, The Burdekin Report*). These Reports represented a culmination of dissatisfaction within the community, by clients, carers, relatives and health professionals, with the process and implementation of de-institutionalization during the 1950s and 1960s. The two inquiries acted as a watershed referring back to mental health care that, in the past had been legally

driven, but was often devoid of compassion, and where concern with social justice and human rights appears to have been lacking at both Federal and State levels.

The chapter will be developed accordingly:

- 1.Introduction.
- 2.Implementing Natural Law in the modern world: a challenge to Utilitarian Social Justice Principles.
- 3.Development of Human Rights talk post World War II. The Universal Declaration of Human Rights in relation to mental health care.
- 4.Significance of the AHMAC and Burdekin Inquiries into mental health care, in relation to Human Rights, Social Justice and the Common Good.
- 5.Current mental health care in Australia in relation to Utilitarianism and Natural Law (Finnis) theory.
- 6.Conclusion.

2.Implementing Natural Law in the modern world: a challenge to Utilitarian Social Justice Principles

John Finnis has written of the role of the Catholic Church in the modern world as an exponent of Natural Law (1980:vi). It would seem to be reasonable, therefore, to consider the Church's pronouncements concerning justice and social justice, that would challenge Miller's statements discussed in Chapter Two. The concern is with currently needed guidelines to indicate ways in which social justice principles may be used today, which may demonstrate the eminent practicality of Natural Law for use in the current global situation.

The Encyclical *Rerum Novarum*, 1891, was produced by Pope Leo XIII in the context of Natural Law, and was written as a result of the impact of industrialization on the Western world (1) (Charles 1998:10-12). This encyclical, in which the Pope championed the rights of workers to be treated with dignity and to receive justice (para.3), is considered to represent the pivotal point at which the Catholic Church's modern social teaching came into being (Charles,1998: xiii-xv). It marked the end of the Church's retroactive and defensive stance over post Reformation recriminations from its opponents. Henceforth, the Church would participate actively in the modern world, exercising its rightful pastoral authority to provide guidelines on the ethical and just needs of the world, using Natural Law as a philosophical guide in all its teachings.

Forty years later, Pope Pius XI (1922-39), was to write *Quadragesimo Anno* (1931), forming a commentary on global developments since Leo XIII's encyclical of 1891. Pius XI was the first Pope to use the phrase 'social justice'

"...Distribution of goods must serve the common good by the law of social justice." (paras. 57-58)

The disturbed international political scene caused many encyclicals and social letters in the following years to be written in the cause of peace and justice by Pope Pius XII (1939-1958), using a Natural Law perspective. On 28 October 1958, Angelo Giuseppe Roncalli, Patriarch of Venice, was elected Pontiff as Pope John XXIII, and in view of his age, was seen to be a caretaker whose brief reign would open the way for someone more capable of coping with the enormous difficulties of post World War II social, economic and political problems (Charles, 1998:144-5). The disorders of the post World War II scene have been amply covered in Chapter Four of the thesis. Instead of maintaining the *status quo*, Pope John XXIII's reign (1958-63), saw the writing of two profound encyclicals, and the calling together of the Second Vatican Council in 1961. The first encyclical, *Mater et Magistra* (1961), referred back to *Rerum Novarum*, and continued the pontifical dialogue with justice for mankind, especially in the agricultural domain (paras.51-121), and rebuilding of the social order (paras.212-64). The second encyclical, *Pacem in Terris* (1963), appeared six months after the Pope had called the Second Vatican Council which met for the first time on 11 October, 1962.

Pacem et Terris, blended in with *Mater et Magistra*, and continued discussing the social problems which had become world-wide. The lunacy of the arms race, and the realization that human solidarity demanded individual concern on the part of all people, in order to improve conditions of life in the Third World so that justice might prevail, were themes of this important encyclical, as well as human rights (paras.11-24), human responsibilities (paras. 28-34), and the common good (paras. 53-59).

With regard to *Mater et Magistra*, it is pertinent to note that the United Nations Organization was set up in 1945, in the light of a growing awareness of the interdependence of nations. A product of the Organization was the Declaration of Human Rights. The encyclical significantly supports the contents of that Declaration by emphasizing the right :

To life and the means to sustain it..to food, clothing, shelter, medical care, rest, social services, the right to be cared for in ill health, after accidents at work, and unsought unemployment (Para. 11). The right to be respected; to a good name, freedom to seek the truth, freedom of speech...to choose a profession...(Para. 12); the right to share in the benefits of culture; to general and

technical/professional training and advanced studies according to talent and the ability of society to provide the means (Para. 13)...the right to work...under conditions which respect human dignity and development, of adults and juveniles, male and female, (Para. 19)...the right to meet together and form associations with their fellows. (Para. 22)

In similar manner, the encyclical outlines that natural rights, as part of Natural Law, are bound up with duties (Para. 28):

“To claim rights and ignore duties is to build with one hand and tear down with the other.” (Para. 30)

Furthermore, the State’s role is to oversee groups and individuals, according to justice, and within the limits of its competence for the common good. (Para. 26)

“The attainment of the common good is the purpose of the State.” (Para. 54)

Two of the decrees of the Second Vatican Council dealt specifically with two social issues: one on Religious Freedom, *Dignitatis Humanae*, and the other, the Church in the Modern World: *Gaudium et Spes*. The intention of the latter was to outline the relationship of the Church with all aspects of human life in current society (Charles, 1998:208), and to

“Reiterate those principles ...worked out (by the Church) in the course of centuries, in the light of the Gospel...principles of justice and equity demanded by right reason for individual and social life and also for international relations.” (Para. 63)

Gaudium et Spes, specifically emphasizes the role of the Church in the modern world (paras. 1-93). The document reflects on the changes occurring in the world, and recommends how we may meet these changes using true freedom and an informed conscience to uphold the dignity of the human person. We are reminded that we must work with all those of good will. Frequently, atheists are reacting against evil (para. 19), and may be the most charitable and practically compassionate to the disadvantaged (para. 21). Comments are also made on the common good, social justice, human solidarity and human rights, together with practical recommendations for their application to our everyday lives (paras. 40-45). These principles of justice would seem eminently suited for application to the needs of the mentally ill.

In direct rebuttal of Miller’s rejection of MacIntyre’s philosophical views, which were discussed in Chapter Two, specific mention is made of the common good and the human being’s communitarian nature (Paras. 25-28).

Life in society is a necessity for man, not an option; through it he develops. ...The common good (is) the sum total of social conditions which allow people, groups or individuals to reach their fulfilment more easily, (and) reaches its fullest realization when all have their human rights protected, the good of the person coming before the good of things. (Paras. 25-26)

While much of the business of the Second Vatican Council remains unfinished, the social teaching of successive Popes has persisted in the same vein. Paul VI (1963-78), particularly wrote in the Apostolic Letter *Octogesima Adveniens* (1971), of the new loneliness that urbanization can bring to the human being, especially for the poor and the alienated. Paul VI emphasized that the young should be catered for, and women offered full equality in cultural, economic and social life (Para. 13). The Pope stressed emphatically that the:

“Marginalized, the maladjusted, the handicapped, the old, need special care.” (Para. 16)

Succintly, Paul VI summed up the current ideological state of affairs between nations, and offered the means of justice sought by Miller. In the same Apostolic Letter, the Pope declared:

Marxist analysis cannot be separated from the class struggle and the totalitarian state to which it leads. Neo-liberalism likewise is still rooted in the error of the absolute autonomy of man. Such ideologies subject man to bureaucratic socialism, technocratic capitalism and authoritarian democracy. (Paras. 34-37)

An alternative is offered; but it is the one which by inference, Miller rejects:

“Christianity seeks to build up a human city on Christ, peaceful, just, fraternal and offered to God. “(Para. 37)

The current Pope, John Paul II (1978-), has written several social documents, one of the earliest being: *Sollicitudo Rei Socialis* (1978). The Pope re-emphasized the Catholic Church’s concern with the dignity of the human being, concern that early post World War II hopes of peace and prosperity were being disappointed (Chap12, Paras.1-3), and that for many people, there was a leveling down, rather than a leveling up of their conditions of living (Chap.15, Paras.2-6). Concern with unemployment, and a re-affirmation on human rights were all hallmarks of this Encyclical. Re-iterating his predecessor’s words, the Pope offers an alternative philosophical view; again, it is the one which by inference, Miller rejects. The need for community life is stressed, (Para. 31), and a belief in social justice is affirmed. We are told that human perfection does not simply consist in an abstract knowledge of the truth. The latter has to be internalized (Para.16), and finds expression in a dynamic relationship of unconditional self-giving with others (Para. 32). Using Saint Anselm’s interpretation of the role of philosophically trained reason, the Pope argues that the priority of faith is not in competition with the search which is proper to reason. Reason cannot pass judgment on the contents of faith; it is incapable of doing this, because this is not its function.

“Its function is...to find meaning, to discover explanations which might allow everyone to come to a certain understanding of the contents of faith.” (Para. 42)

Fides et Ratio (October 15, 1998), discusses the ‘methodological doubt’ and the ‘neo-Gnostic’ tendencies of the New Age ideology (Intro.). Throughout this Encyclical, John Paul II demonstrates his ability as a philosopher, describing faith and reason as:

“Like two wings on which the human spirit rises to the contemplation of truth.” (Intro.)

Describing the path that philosophy has taken down the centuries, the Pope states:

With the light of reason human beings can know which path to take, but they can follow that path to its end, quickly and unhindered, only if with a rightly tuned spirit they search for it within the horizon of faith...Reason and faith cannot be separated without diminishing the capacity of men and women to know themselves, the world and God in an appropriate way. (Para. 16)

The Pope constantly returns to the theme of philosophy: a union between faith and reason throughout the encyclical, showing how each supports the other. It is within this context of the support faith and reason give to each other, that the Pope addresses scientists in particular, offering his admiration at their work which constantly expands the limits of knowledge, and encouraging their efforts without abandoning the *sapiential* horizon within which:

“Scientific and technological achievements are wedded to the philosophical and ethical values...which are the mark of the human person.” (Para.106)

Here one sees the error so often made by rationalists who, recognizing that science requires empirical proof and validation of its hypothesis, fail to realize that scientific methodology is not applicable or feasible, in proving the existence of God. Faith requires Revelation and a right reasoning, to accept on trust the existence of a Supreme Spirit Who is in a different dimension from His human creation (Para. 16).

Turning towards the downside of current philosophical views, the Pope regrets the change in the role of philosophy, which he sees as having been marginalized, while other forms of rationality have appeared which are not directed towards the contemplation of truth, but towards the:

“Promotion of utilitarian ends, towards enjoyment or power.” (Para. 47)

In relation to Miller’s implied indifference to Natural Law, the Pope comments briefly on what is still a nebulous term: ‘postmodernism’, and states that the currents of thought which claim to be postmodern merit attention (Para. 91). The sense of nihilism, suggested by some interpretations of this philosophical view, are indications of the experience of evil which has marked our age. This has resulted in a collapse of the optimistic attitude so prevalent in the Enlightenment period, and which carried people forward for two hundred years with

belief in their own invincibility (Para. 91). In the bewildering state of confusion in which human beings now find themselves, the Pope urges a return to trust in faith and reason (Para. 91). A Natural Law model as constructed in Chapter Two, is capable of being applied in the manner described by the Pope, especially in relation to mental health care as a medium for justice, including social justice and human rights. Throughout this chapter, it will be shown to provide a satisfactory answer to Miller's rejection of Natural Law.

One Example of a Mental Health Care Service in Australia using a Natural Law (Finnis's) Theory.

An example given below will describe the eminent practicality of Natural Law theory and practice as implemented in current mental health care offered by the St. John of God Health Services, Australia. This charitable Catholic Order was founded by St. John of God, (Joao Cidade), in Portugal five hundred years ago. It is a world-wide organization, which focuses especially on mental health problems, including drug and alcohol related problems, youth depression and suicide. In Australia, the range of programs include: counselling and therapy centres, pre- and postnatal support network for those suffering from post natal depression, Corporate health programmes to provide employee assistance so that clients may continue in their occupations while receiving counselling and support therapy, accommodation and support services for homeless people with chronic mental disorders, and hospitals for those requiring acute care.

Among the activities of the Brothers of the Hospitaller Order of St. John are the provision of support for families in the Hunter region of NSW, who are experiencing difficulties in managing the behaviour of children aged three to eleven. The Brothers provide support through individual assessments and casework, and an in-home behaviour management support program. They provide, also, a behaviour management education program, a respite program for children and families, and a school support service, specializing in helping schools manage challenging behaviour in students in mainstream settings (Annual Report, 2001).

The Order also works with the Brown Nurses, an institute of Catholic Sisters carrying out home visits to those with AIDS, psychiatric disorders and dual disabilities. A significant contribution is made in giving assistance to the Aboriginal community, and the Brothers' drug and alcohol dependence work is well known in health circles. The locations include

six sites in Sydney, twenty five in regional NSW, with other centres in all of the capital cities, and regionally, three in Victoria, four in Queensland, two in Tasmania, two in Western Australia, and one in the Northern Territory (Annual Report, 2001). (2)

By helping people at home, at work, in crisis, the Order clearly fulfills the Australian Health Ministers' Advisory Council (AHMAC) objectives which are:

"To enhance mental health and social functioning; reduce the incidence, prevalence and sequelae of mental health problems and disorders; and improve the range, quality and effectiveness of strategies to promote mental health and prevent problems and disorders." (Annual Report, 2001)

These objectives will be discussed later in this chapter. In undertaking this Mission, the Order is utilizing Natural Law unconsciously, simply by carrying out, to the best of their ability, the desire to use Christian principles and assist their disadvantaged fellow members of society. In so doing, they are demonstrating the practicality of Natural Law in serving the vulnerable and marginalized mentally ill, maintaining a strong belief in the common good and bearing witness to the importance of social justice. They are also affirming by their actions, their belief in human rights for all members of the community.

3. Development of Human Rights Talk Post World War II: The United Nations and the Universal Declaration of Human Rights in relation to Mental Health Care.

Human Rights

Finnis states in Natural Law and Natural Rights (1980), that everything in the book is about human rights, the term being synonymous with 'natural rights'. Finnis believes that the modern grammar of rights expresses virtually all the requirements of practical reasonableness (1980:198).

- Definitions of Human Rights.

In all the writings examined concerning human rights, it has been difficult to discover a satisfactory definition of the concept of human rights itself. In the *Burdekin Report* Brian Burdekin has defined human rights as :

"Balancing the rights of all of us as individuals within the community." (1993:3)

This, however, is an inadequate definition, because it is obviously circular. Geoffrey Robinson, an international lawyer specializing in human rights' law, has stated that

"Any system of law...inferentially confers 'rights' on citizens to whom it applies, at least in the negative and residual sense entitling them to behave in a manner which it does not specifically prohibit." (1991:1)

Finnis has stated that human or natural rights are:

“The fundamental and general moral rights, (and that) the vocabulary and grammar of rights are derived from the language of lawyers and jurists and is strongly influenced by its origins.” (1980:198)

-Historical development of human rights talk.

Examination of the development of human rights talk from its historical origins may offer a clue as to whether there has been a sundering of the connection between justice and rights **(3)**, that is, that rights rhetoric fails to accord justice. Alternatively, conceptions of rights in the utilitarian/liberal mould may have insufficient resources to accord justice to the mentally ill.

As already stated, most of modern human rights language has grown out of Enlightenment philosophical views of the eighteenth century (Glendon, 2001:xvii), although Robertson sees the limiting of the king’s authority in Magna Carta (1215), as a forerunner of Article 6 of the European convention on Human Rights:

“Everyone is entitled to a fair and public hearing within a reasonable time.” (1999:3)

The later English Bill of Rights, (1685) resulting from the overthrow of Charles I and the Cromwellian rebellion, the US Declaration of Independence (1776), and the French Declaration of the Rights of Man and Citizen (1789), were all influenced by philosophers whose works are associated with the Enlightenment period. These developments led Hobbes to declare that *jus* and *lex*, *right* and *law* should be distinguished, believing them to be inconsistent. Hobbes in Leviathan, identified the source of political power in the consent of the people (Robertson, 1999:4). Locke is believed to be the first political philosopher to propose the principle that government is by popular consent, and is contingent upon a commitment to protect liberty (Robertson, 1999:4).

“Man, by nature (is) all free, equal, and independent, no-one can be put out of this estate and subjected to the political power of another without his own consent.” (Locke, 1690)

Locke’s philosophy became popular throughout Europe, was supported by intellectuals such as Rousseau, who declared that ‘everywhere, man is in chains’, Voltaire, who interpreted Locke’s words in defence of liberty of the Press, and Beccaria, who argued against unjust and excessive punishment by the State (Robertson, 1999:6). Thomas Paine **(4)** is another passionate writer of the eighteenth century, and, like the Enlightenment philosophers, emphasized liberty, the rights of the individual and freedom (Robertson, 1999:4).

It was as a result of the Reign of Terror during the French Revolution that Bentham disavowed himself from natural rights which he saw as illogical and uncertain. (5) When natural rights returned to favour, it would be as ‘human,’ rather than as ‘natural’ rights. Finnis has stated that natural law is about natural rights, and that these are synonymous with human rights. He believes ‘human rights’ to be a contemporary idiom for ‘natural rights.’ (1980:197) The terms are used synonymously throughout this thesis.

Another strident critic of natural rights was Karl Marx, a Berlin Jew, whose social theories were discussed in Chapter Two and Chapter Four, (fn 1) and who wrote an essay in 1844: On the Jewish Question, in which he queried whether the French Declaration could assist Jews who were being discriminated against in Germany (in Robertson, 1999:11-12). He concluded that the Declaration had focused on man as bourgeois and that the Revolution had produced a politically emancipated individual who was motivated only by self-interest, whereas true emancipation would have made the citizen into a moral person. This was a theme to which Marx returned and elaborated upon a few years later in Das Kapital (1864).

This strong, early critique influenced Marxist thinkers in the twentieth century to consider human rights as a device invented by capitalists to universalize their values, especially freedom of enterprise (Robertson, 1999:12), but Marx himself was a supporter of the Declaration’s identification of citizens’ rights. Marx cited Rousseau in defence of such rights, claiming that these new communal rights could assist social transformation to a ‘moral existence’ (Walden: 1987). Marxism was manipulated after the Russian revolution of 1917, and re-invented by Lenin as a doctrine in which citizens’ rights became State rights, and previous revolutions in America and France were sneered at as providing uprisings of the bourgeoisie, with freedom of speech a sham, enabling the rich to control propaganda for the sake of their own interests (Scull 1993:145-146). The significance of Leninist Marxism on future treatment of the mentally ill in Russia, was considered in Chapter Two (page 102, fn 61).

Finnis states that human rights can only be securely enjoyed in a certain sort of milieu—within the context of a framework of mutual respect, trust, and common understanding, an environment in which the weak can go about without fear of the whims of the strong (Finnis, 1980:216). This sort of milieu does not seem to have been provided either by the

Versailles Peace Conference of 1919, or the League of Nations. It was not visible in the uneasy peace between the nations of the world before the outbreak of World War II in 1939. (6)

After the first World War of 1914-1918, one would have thought that the carnage which had claimed 8.5 million lives, would have engendered a Peace Treaty which would have emphasized social justice manifest in the predominant Right to Life movement, and would have focused, especially, on the prevention of loss of life, in the insanity and obscenity of war. Human rights are only marginally secondary to the all important right to life itself, but the focus of the Peace Treaty seemed intent on extracting revenge by the victors over the vanquished (Robertson 1999:19).

Political travesties of human rights.

Robertson contends that the 'show trials' presented in Moscow 1936-1938, of intellectual dissenters who were labelled as 'mentally ill' and confined in asylums for the short remainder of their lives, together with the Holocaust victims of the second World War, were gross travesties of human rights and social justice (1999:16-17). In support of Robertson's statement, it is argued firstly, that a political power which behaves in such a way, is defining mental illness to suit its own political agenda, not as a statement of health. The political power is declaring mental illness to be a deviation from the established norm of belief in that political system, and is arrogantly using that adaptation of the meaning of mental illness to make a political statement. Secondly, in making that statement, the government is equivocating about the meaning of mental illness in stating, not only that individual political belief is disallowed, but also that the power of the State can remove individuality by social conditioning. It is, then, imposing communal norms in a punitive and coercive distortion of what is meant by 'community', and exercising social control over these marginalized members of society (Heginbotham in Parker, 1999:49-50).

The labelling of political dissidents in this way was employed by democratic governments as well as by totalitarian authorities. For example, Ezra Pound the poet (1885-1972), was confined by the US government to a mental hospital in the United States post World War II, because of his pro-Fascist stance during that war. Such examples of distortion of human rights and consequent social injustice, demonstrate a politicization of mental health. Raymond Gaita has written that an understanding of the death camps of World War II and

post war Stalinism which so ignored and/or manipulated human rights, is essential if we are to understand the distortion of human values which they constituted (1999:141). Not only were they horrifically efficient killing centres, but also :

“There occurred in them an assault on the preciousness of individual human beings of a kind never seen before.” (1999:141)

The recognition of the absolute sanctity of human life, has implications for making us aware of our responsibilities in the application of the principles of social justice. The necessity of being equally supportive in upholding the responsible use of human rights talk, when treating those who hold different views to our own, and those who are seen by the community as ‘different,’ such as the mentally ill, are all part of our share of responsibility in maintaining the common good. It is worth remembering, that in an earlier discussion on the definition of mental illness (Chapter One, pp.6-13), it was observed that irrational behaviour is the primary symptom of the mental incapacities called ‘mental illness.’ It is recalled that Moore stated:

“The mental abilities of perception, memory, imagination and reason are necessary for the acquisition of natural beliefs and the rendering of consistency between belief sets and between desire sets...Being mentally ill means being incapacitated from acting rationally in the fundamental sense.” (Moore, 1980:60)

The health aims of rehabilitation and therapy for the mentally ill, to attempt to restore their ability to act rationally, can be seen to be widely disparate from the political aims of power. Human rights talk became a prominent part of the post World War II scene, and may be seen as the epitome of Enlightenment theory implemented politically. It led to the founding of the United Nations and the writing of the Universal Declaration of Human Rights (Glendon, 2001).

Development of the human rights concept as a World War II aim: foundation of the United Nations.

The concept of human rights and justice was raised seriously by the author H.G.Wells in his widely read and popular book: The Rights of Man (1940). Wells was a friend of President Roosevelt, and his arguments on behalf of human rights stayed with Roosevelt. In 1941, the President made his famous appeal for a world:

“Formed upon four essential freedoms...freedom of speech, worship, and freedom from want and fear.” (Robertson, 1999:22)

On January 1, 1942, the Allied powers made human rights a war aim, declaring that:

“Complete victory (over the enemies) is essential ...to preserve human rights and justice in their own lands as well as in other lands.” (Robertson, 1999:22)

Many lofty aspirations are voiced during a conflict, and clichés abound such as: ‘Peace in our time.’ ‘A land fit for heroes to live in.’ When ‘the war to end war’ (World War I), was over, these phrases were exposed, regrettably, as rhetoric. After World War II, it was intended at the cessation of hostilities in 1946, that there would be a response to totalitarianism by reasserting individual liberty –a manifestation of Enlightenment belief. This liberty was to be protected by an international order that relied on the rule of law, rather than on diplomacy (Robertson,1999:23).

By the time victory for the Western allies was obvious, the universal concern to establish a world wide legal order was seen as too radical for allied governments to implement, and the lofty aspirations so freely expressed hitherto, were redeveloped in less assertive terms (Robertson,1999:23). The allies turned to a low key League of Nations model at the four power conference held at Dumbarton Oaks in 1944. This meeting led to *the Charter of the United Nations*, signed by forty four nations in San Francisco, 26 June 1945. It is reported by Robertson that it was the USA which took the lead in giving human rights its prominent position in the *United Nations Charter*. This is demonstrated in the preamble determination: “To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.” (In Robertson,1999:414-5)

Glendon, having scrutinized the documents connected with the founding of the United Nations Assembly, and its offshoot the *Universal Declaration of Human Rights* in Paris, December 10,1948, has stated that as far as the Great Powers of that day were concerned, the main purpose of the United Nations was:

To establish and maintain collective security in the years after the war. The human rights project was peripheral, launched as a concession to small countries and in response to the demands of religious and humanitarian associations that the Allies live up to their war rhetoric by providing assurances that the community of nations would never again countenance such massive violations of human dignity. (2001:xv-xvi)

Glendon further reports (2001:9), that Stalin remarked during the Yalta Conference in 1945, that many small nations nursed the absurd belief that the Great Powers had fought the war in order to liberate them! From the beginning, then, there were two contrasting aims: one political, the other, subsidiary and humanitarian. It would remain to be seen how the disadvantaged and marginalized, such as the mentally ill would fare, when competing for attention (and funding) with the political aims of the United Nations Organization itself. *The United Nations Charter and Human Rights Talk*.

In Article 1, the aims and objectives of the United Nations are set out:

“To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” (In Robertson, 1999:24)

These words form a sweeping statement of a scale never before attempted by all the contributing nations to be partners in an enterprise to:

“Promote higher standards of living, full employment and conditions of economic and social progress and development....(to) create conditions of civility and well-being which are essential for peaceful and friendly relations among nations.” (Article 55)

One can sense here the similarities in thinking between those contributing to the United Nations aims, and those words penned by Pope John XXIII, described on pp.231-232 of the thesis, where the framework of Natural Law demonstrates its pertinence to current needs.

Out of the intent of Article 55 of the Charter, came Article 68, which provided for a Commission on Human Rights to be set up by the Economic and Social Council. Founding members of the United Nations, were wary of committing themselves to legal obligations, which would have tied them into defined actions in the unknown future. Instead, they reacted to the immediate post-Nuremberg revelations of the horrors perpetrated on innocent victims by the accused, by deciding that it was morally imperative to put in place an international agreement that such events should not happen again (Robertson,1999:26). The ensuing *Universal Declaration of Human Rights* was adopted by forty eight members of the General Assembly in Paris, on 10 December, 1948.

‘Freedom for *all*’ was, perhaps, included without due consideration to its significance. There seems to have been no thought given as to whether some groups might or might not have their human rights curtailed. For example, did *all* embrace criminals, the mentally ill and aliens? We need a broad conception of the common good to affirm our inter-relationship with each other (Heginbotham in Parker, 1999:48). If we do not value our relationships with those who have, or who have had mental illness, we will, in varying degrees exclude them from the community or, in other words, the common good (Heginbotham in Parker, 1999: 47-61).

The United Nations employed the term ‘good faith’ (Article II 2), which is a well known concept in law, clarifying the fact that nations must be willing and ready to comply with the duties they have agreed to perform (Drinan, 2001:4). (7) The Charter, offered a means of

solving the problem of mental health care where it presented as a dimension of a model having other equal dimensions involving economic, social or humanitarian inputs. During the immediate post war period, however, there was little said about 'rights of the mentally ill,' but 'rights talk' formed part of the vocabulary of a society marked by social unrest. Philosophers, such as Sartre, believed that personal decisions should be made and responsibility taken for one's own actions, without using religious practices or social customs as a shield, which might be employed so as to avoid personal responsibility for those personal actions (Sartre, 1947 in Fagothey, 1972:191).

The wording of the document made it possible to penetrate the sovereignty of a State, with the intent of preventing a repetition of the events in 1933, when Germany began killing her own nationals, and other nations refused to consider this an international problem (Robertson, 1999:28). The document would prove a benchmark in later years when social justice issues, such as the rights of the mentally ill or the health of indigenous peoples in individual countries were able to be legally scrutinized by the United Nations officials, and recommendations issued accordingly.

The proliferation of rights talk immediately after the second World War, raises the question asked already at the beginning of this chapter: how does one define human rights? Drinan has stated that this question has been debated since the Biblical question: "Am I my brother's keeper?" The plea for human rights is as old as the demand made by Moses of Pharaoh, "Let my people go." (Drinan, 2001:8) While there is no mention of a supreme being as the ultimate origin of the inalienable rights of every human being in the United Nations Charter, both Drinan and Robertson believe that the Charter and Universal Declaration of Human Rights reflect a deep agreement on fundamental values concerning the worth of the human being (Drinan, 2001: 8).

There is, however, an incompleteness in post World War II human rights talk concerning the use of the word 'rights.' While Robertson and Alston give legalistic definitions, Simone Weil in her essay, *Human Personality*, has added another dimension, namely, charity, as she states:

If you say to someone who has ears to hear: 'What you do to me is not just,' you may touch and awaken at its source the spirit of attention and love. But it is not the same with words like 'I have the right to' or 'you have no right to'...They evoke a latent war and awaken the spirit of contention.

To place the notion of rights at the center of social conflict is to inhibit any possible impulse of charity on both sides. (In Gaita, 1999:80)

Weil and Glendon both perceive a one-sidedness in the human rights debate, if rights are stressed in preference to obligations, and without the ingredient of compassion. The building segment of obligations is very much part of Finnis's theory of Natural Law, and is a primary focus of human rights in any Natural Law model as stated earlier in this chapter (Finnis, 1980:297-343). It was echoed by Aquinas surely acknowledging the ethics of Judaeo-Christianity, in which the Ten Commandments exemplify God's covenant entered into freely by Him and His creation - mankind. God, on His part will care and protect His people, while we for our part will obey His commandments, all of which clearly state human rights in terms of what our obligations are to each other and to God (Finnis, 1980:197). This implies a mutual obligation undertaken in Weil's awareness of responsibilities, in a spirit of compassion and love of our neighbour, as a covenant, not merely as rights. A covenant is more than a legal contract. It implies the obligation and desire to remain constant to one's undertakings in both good times and bad. It also upholds Weil's and Finnis's statements that obligations are prior to rights (in Gaita, 1999:80) (Finnis, 1980:197).

Aquinas believed that the moral principles of the Ten Commandments are conclusions from the primary self evident principles which themselves require experience and intelligence in order to be understood (Finnis, 1980:101). Aristotle, so very much earlier, asserted that ethics (here understood as reasonable solutions to a problem) can be satisfactorily expounded only by, and to those, who are experienced and wise (Nicomachean Ethics 3:1095a 7-11; 4:1095 65-13:1179b 27-30). The concept of human rights may be misused and the semantics wrongly applied if obligations and responsibilities are not recognized, appropriate to one's stage of maturity and understanding. (8) For example, human rights' talk would have one believe that an infant and child have rights; but responsibility and rights are co-partners. (9) Children in their earliest stages are egocentric. 'Fairness' is related to 'me.' It is only with maturity and parental example, that the child begins to look outwards towards the larger group of the community and to enter into values which recognize others' needs and wishes.

Finnis emphasises the inability of the family unit to be all encompassing (1980:147). One of its functions is to enable the child to grow, develop and mature in a right and good manner, so as to be able to emerge from the family into the community as a valuable and independent member of society, able to communicate and to interact with other societal members (Finnis, 1980:147). If the family is indifferent to its mutual and community responsibilities, if physically, mentally and emotionally, offspring become scarred by family and societal experiences, then the individual will not function well as a mature member of society, and may be predisposed to developing mental illness. This will be referred to within the context of the *Burdekin Report* (p.262).

When dealing with mental illness, there is a similar misuse of semantics as noted in **fn. 8** when health professionals assert that their clients have a 'right to make a choice.' The clients may not be in a sufficiently coherent state at that moment to comprehend the abstract meaning of 'choice.' They may have reverted in their illness to a childlike, egotistical stage of 'me.' The mentally ill may be inward looking during an acute phase, and occupied with the ego, so that to tell them of their 'rights' is to reinforce that self centredness, when they are unable to undertake the necessary obligations and responsibilities which relate to the right. The argument fed to them of their 'rights' is, then, spurious.

During the last fifty years, detailed instruments have been developed that translate the common standard of the Declaration into means of addressing specific types of discrimination against particularly vulnerable groups. These standards are set out in a series of Covenants, Conventions, Declarations, Principles and Rules (Burdekin, 1993:5). Some of these instruments are binding on Australia as a matter of international law. Others, while not strictly binding in international law, set out agreed international standards, to which Australian governments have committed themselves in a variety of ways, for example, in some cases, by incorporating them in Australian legislation (Burdekin, 1993: 5, nn. 1-5).

Apart from the perceived difficulties in enforcing the *Declaration of Human Rights*, questions were bound to occur, concerning the ability of the now one hundred and ninety one countries, many with different cultures and backgrounds, to accept universally, the commonality of the rule of law. That some progress has been made, despite inevitable disappointments, is evidenced in the fact that nearly fifty years after its inauguration, a

World Conference on Human Rights, attended by representatives from one hundred and seventy one nations, could be held in Vienna in June, 1993. At the Conference there were serious problems raised concerning the individual nation state's interpretation of 'human rights', and even more in their enactment. China protested that human rights are an invention of the West-a sentiment expressed by high-level Chinese government officials (Drinan SJ, 2001:120). These officials declared that the USA, (the country that China sees as the driving force behind the United Nations), had no right to impose allegedly Western ideals of human rights on China. During the Conference, this contention faded away and was finally withdrawn (Drinan, SJ. 2001:x).

Each continent, and many of the developing nations, revealed problems involving human rights, which were seen as peculiar to their own needs. India, for example, has remained sensitive to human rights, and has called for affirmative action for those Indians classified as 'untouchables'. In Malaysia and Indonesia, human rights issues still remain complicated by the desire of some influential Islamic groups to make Islamic law, or Shari'al, more controlling. Africa, with over fifty two nations, many of them decolonized in the 1960s, would seem to be a continent where enthusiasm for internationally recognized human rights could be anticipated. Despite the desire to end Apartheid in South Africa, and with numerous problems concerning slave labour, child soldiers, women's rights, and constant various issues on the violation of human rights in, for example, Kenya, Sierra Leone, Gambia, Malawi, Rwanda and Zimbabwe, the International Bill of Rights under discussion at Vienna, was seen by representatives from these countries as a product of European or western powers (Drinan SJ. 2001:118-119). Even worse, it was often seen as a product of the colonial powers which had, to a large extent, destroyed much of African culture (Drinan SJ. 2001:118-119).

The *Vienna Declaration on Human Rights and proposed World Action*, was adopted on 25 June, 1993. (10) Much of the credit for the adoption of the *Vienna Declaration* must be given to the Non Government Organizations (NGOs) who, providing representatives for each of the participating countries, worked tirelessly to obtain agreement to the *Declaration* in a way that was acceptable to each country (Drinan SJ. 2001:118-119). The importance of the *Vienna Declaration* was that it re-emphasized the acceptance of human rights as a product of international law. All countries could recognize that:

“Human rights- civil, cultural, economic and political- are interdependent and indivisible.” (Drinan SJ. 2001:xi)

-An outcome of the United Nations Organisation: World Health Organisation (WHO).

Sharpening the focus on mental health, regard needs to be made of an outcome of the United Nations Charter: the World Health Organisation. The latter was formed at the time of the signing of the United Nations Charter, on the recommendation especially from Brazil and China (Wood, 1988:3). An International Health Conference was sponsored by United Nations, and held in New York, USA, from 19 July to 22 July, 1946. The Constitution of the World Health Organization was adopted by the Conference and signed on 22 July, 1946, by representatives of sixty-one Member States including Australia. Resulting from this procedure, WHO. became the single directing and co-ordinating authority on international health work (in Wood,1988:4). Among its principles of specific interest to mental health care is the definition of:

“Health (is) a state of complete physical, mental and social well- being and not merely the absence of disease or infirmity.” (In Wood, 1988:4)

The rights of the mentally ill, however, were not officially addressed by the United Nations until 1975, with the *Declaration on the Rights of Disabled Persons* (Burdekin,1993:989).

‘Disabled person,’ was defined as meaning:

“Any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, whether congenital or not, in his or her physical or mental capacities.” (In Burdekin,1993:25)

Burdekin has stated that this definition included many people with a mental illness, but it was not until 1991 that *Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care* were developed (Appendix 5.1). These Principles had not been formulated at the time of de-institutionalization, and were essentially retrospective. Certainly, during the de-institutionalization process which began in the 1950s and was gathering momentum by the 1960s, there were no measures emanating from UN, which would give any impression that officials were aware of the vulnerability of the mentally ill, and of the dangers of exploitation to which they might be exposed, such as by unscrupulous landlords, who were reputed to exploit the mentally ill who required accommodation after discharge from the asylum. Landlords were reported in all three countries: UK, USA, and Australia, to be charging exorbitant rent for substandard accommodation and often taking control of the tenants’ pensions (O’Sullivan, 1981:15).

-Primary Health Care and Mental Health.

It was acting as its own authority that, recognizing the magnitude of health problems, in September 1978, WHO, and the United Nations International Children's Emergency Fund (UNICEF), jointly sponsored an International Conference on Primary Health Care in Alma Alta, capital of the then Kazakh Soviet Socialist Republic. This proposed a revolutionary concept of health care for all subscribing member countries, seeking active participation by individuals in promoting positive health, preventing illness, and co-operating in partnership with health professionals during an acute episode of illness. Primary Health itself was described as:

Essential health care based on practical, scientifically sound and socially acceptable methods and technology made universally accessible to individuals and families in the community through their full participation and at a cost that the community and the country can afford to maintain at every stage of their development in the spirit of self-reliance and self-determination. (In Wood, 1988:81)

Included in this all embracing description was mental health. WHO, has made one of its objectives, the reduction of problems related to mental and neurological disorders, alcohol and drug abuse, and to facilitate the incorporation of mental health knowledge and understanding in general health care and social development (1988:81). (11) The Thirty-Second WHO Assembly recommended that:

"Primary health care should include as one of its elements the promotion of mental health, linking mental health with the training of primary care personnel, provision of health services and sharing of research." (1988:81)

There was then a foundation laid that made globalization of the standards of mental care possible, with a means of sharing research, knowledge and successful strategies through the mediation of the United Nations and WHO. Whether the rhetoric of human rights talk could be satisfactorily translated into action would be tested in the findings of the *Australian Health Ministers Advisory Committee's Strategy* of 1992, and the *Burdekin Report* of 1993.

4. Significance of the Australian Health Ministers' Advisory Council (AHMAC), and Burdekin Inquiries into Mental Health Care in relation to Human Rights, Social Justice and the Common Good.

Background

There has always been friction over health expenditure between the Federal Government and the States. The Federal Health Minister asserts that the States are provided with sufficient funds to run their hospitals efficiently; the States retort that the money is

inadequate, and hospital waiting lists will inevitably grow. During the 1970s, the economic recession was starting to menace, and there were warnings from bureaucracy of the cost of health. In such an environment, and with valuation of prime real estate making the large areas of ground occupied by mental hospitals most desirable properties, it is surely no wonder that throughout Australia, as had happened in USA, there was a strong move towards speeding the process of de-institutionalization. This was not only because of what seemed to be an altruistically logical pathway, but also because of what appeared to be a cost saving measure.

In Chapter Four, it was shown that the shift to de-institutionalization was strongly supported by social scientists and academics during the post World War II years, and grew in intensity until by the 1970s it had to be addressed in Australia on a State wide scale. There is no doubt that the prospect held attraction for bureaucracy, viewing the large acres of prime real estate near each of the State capital cities, but it would be unfair to leave an impression that de-institutionalization constituted a cynical exercise. There was genuine concern by a wide sample of health professionals and by many politicians, that with the advent of neuroleptic drug therapy, socially unacceptable behaviour patterns of the mentally ill would be controlled, so that the clients could adapt to acceptable social norms, and the days of asylumdom would be over. Use of the psychiatric hospital should now be reserved for those requiring emergency therapy, short stay care, or those for whom living on an estate within or near each of the State capital cities in the community, might pose a danger for themselves and/or society. Planners believed it to be possible to attach psychiatric departments to general hospitals as any other specialty area, such as intensive care or midwifery. This would, it was believed by officials, help to 'normalize care', remove the stigma of the psychiatric hospital, and be preferable for hospitalization, should it be needed, rather than admission to the 'stand-alone' institution (Heginbotham in Parker, 1999:58-61).

For such a massive change to occur, it required careful planning, feasibility studies and market research to test the community readiness for this change. Cost effective research was needed, together with evaluation of existing human and economic resources, as well as a carefully organized educational program embracing patient, professionals and community. None of this seems to have occurred. There appears to have been a notion that without any additional funding or preparation, patients could be transferred to the

community sector and be cared for at home by unpaid family carers, thus reducing the health costs overall (Heginbotham in Parker, 1999:47-61). As Burdekin was to comment later, it was assumed that most people with mental illness would have somewhere to live, but in fact, they had great difficulty in finding accommodation, due to poverty, discrimination and the nature of their disability (Burdekin, 1993:340).

Deinstitutionalization...left many mentally ill people and their families in a quandary over accommodation. Most families, however loving they may be, are ill-equipped to handle living with a person who has a severe mental illness. Yet the realistic alternatives are often highly undesirable: marginal accommodation such as substandard hostels or boarding houses, or even homelessness. (Burdekin, 1993:340)

This observation echoes the statement made in Chapter Three of the thesis, (fn46) that at the time of the introduction of asylumdom, two hundred years ago, many families once free of the responsibility of caring for mentally ill relatives, were most reluctant to accept them back into the family home.(12) Had Scull visited Australia during the period of rapid deinstitutionalization, he might have recognized from his USA experience and described similar scenes in his eloquent style, although they were not on the same scale as occurred in USA. It is also emphasized that very few psychiatric nurses existed who had been educated in Australia to work in the community sector and monitor the health of the mentally ill. They were essentially the product of asylumdom, and, lacking skills related to community health care, were unable to relate to the needs of the mentally ill adrift in society. These skills will be considered more fully later in the chapter (pp.257-258).

In each State/Territory, investigations were made as described in Chapter Four, the most well known one being that conducted in NSW, by Dr. D.T. Richmond: *Inquiry into health services for the Psychiatrically Ill and Developmentally Disabled (NSW Government Mental Health Services, Sydney (1981))*. This Report recommended community care, and was acted upon with almost unseemly haste by the State government. There had been numbers of discharges from psychiatric hospitals before this date, and in the NSW. Legislative Assembly in March 1979, the member for Ashfield raised the issue of poor standard of accommodation for former psychiatric patients in his area. Spotters were reported to be receiving fees for shepherding discharged patients toward sub-standard boarding houses. It was also alleged that former patients were being given their drugs by untrained people (O'Sullivan, 1981:15). Reports from each State and Territory describing the needs of the mentally ill are listed among the references in the Bibliography.

Factors leading to Federal/State Governments and Burdekin Investigations

By the 1980s, in all States/Territories, politicians became aware through their constituents, of mental health care problems. They were also aware that the mental health sector now housed in the community would need a much larger proportion of the health budget than hitherto. The problem could no longer be overlooked.(13)

It was within this emotive, disturbing and unsatisfactory environment, that the two, decisive, national moves were made to inquire into mental health care in Australia: the one political and consultative, by the Federal and State Health Ministers (the Australian Health Ministers' Advisory Council –AHMAC- Task Force), (14) the other, a fact-finding inquiry at grass roots level (the Burdekin Inquiry). Brian Burdekin, Commissioner for Human Rights, had been conducting an investigation into the plight of young people and children who were homeless and existing on the streets (*Our Homeless Children*, 1989). (15) That the two investigations (AHMAC and Burdekin), occurred together was fortuitous, but Raphael, Chairperson to the AHMAC Task Force, emphasized that whereas hers was the consultative role, strong re-reinforcement was given to the Working Party's statements by the painstaking efforts of the Burdekin Inquiry. (16) Burdekin uncovered a wealth of anecdotal evidence by probing at 'grass roots level', and provided claims from patients, relatives and health professionals. This evidence assisted the AHMAC Inquiry members to decide the format and direction of the plan they would recommend to government, bureaucracy, health professionals and local authorities, in order to remedy the perceived unsatisfactory state of affairs.

Burdekin, innovatively, had involved the voice of the mentally ill themselves and their carers, not just investigators and health professionals. Their anecdotal evidence overwhelmingly showed a disturbing need for promotion of, and investigation into, social justice and human rights for the mentally ill. Without Brian Burdekin's enormous documentation, Dr. Raphael doubted that change would have come about so widely, so rapidly, and so convincingly. (17) There was a cohesion and collaboration of effort and direction by both investigations, since Dr. Raphael was also a special adviser to the Burdekin Investigation (See Appendix 5.3).

The Report: National Inquiry into Human Rights and Mental Illness (hereafter called the Burdekin Report).

The Report was forwarded to the Attorney-General by the then Federal Human Rights Commissioner, Brian Burdekin, on 16 September, 1993. The preceding investigation had taken place over three years, since June, 1990, with Public Hearings commencing in Melbourne on 8 April, 1991.

In undertaking this inquiry, Commissioner Burdekin had exercised his two primary responsibilities under Federal law:

- To increase the understanding, acceptance and observation of human rights in Australia, and
- To promote a fairer society by protecting human rights and ensuring that Australia complies with its human rights obligations under international law (in the Burdekin Report.1993:3).

The Burdekin Inquiry was formally announced in June, 1990. That mental illness was a social as well as a medical problem was confirmed already by a statement in the Richmond Report, which made it clear that:

“Mental illness touches all socio-economic groups in Australia, and there is growing evidence that its morbidity is greatest in the most productive years when family responsibilities are also at their peak.”
(Richmond, 1983:17)

Neither was it possible for bureaucracy nor the health professions to ignore the fact that the problem was large, as the statistical evidence that was detailed in Chapter One of this thesis emphasized. (18) In considering the framework within which to construct his inquiry, Burdekin observed that there had been approximately 40 inquiries in NSW alone into psychiatric facilities and services, since the first recorded case of mental illness in 1801. The focus of these State/Territories’ investigations had concentrated on maladministration, under-resourcing, overcrowding, abuse and harassment, together with inadequate legislation (1993:5).

There had been only two inquiries attempting to provide a national perspective, but still within the same terms of reference as hitherto: *Mental Health Facilities and Needs of Australia: A. Stoller and K. W. Ascott (1955)*, and, *National Mental Health Services Policy, The Report of the Consultancy to advise Government, State and Territory Health Ministers: P. Eisen and K. Wolfenden (1988)*. Neither of these two inquiries had addressed the issue of human rights and social justice in relation to those affected. Such an omission was symptomatic of the times; social justice was not an inbuilt component of bureaucratic

investigations into what were seen as essentially administrative problems. By ignoring the principles of social justice for the mentally ill, the Inquiries were reinforcing the claims made earlier in the chapter, that by committing the greatest good to the greatest number, Enlightenment politicians and members of society were separating the marginalized from social justice and from society itself. These inquiries, like so many before them, were addressing important administrative factors, but each time, either ignoring or rejecting the importance of social justice as a manifestation of justice itself. They failed to see that in order to promote human rights especially for the vulnerable members of the community, there was a need for everyone to participate in the common good. In so doing, the Reports highlighted the obliviousness of society to the mentally ill as part of the common good and demonstrated a significant failure of any consideration of justice for this section of the community. Burdekin quoted Lawrence, who investigated the Chelmsford Hospital issue:

“An historical review of those Inquiries does not leave one with many precedents for change or with optimism for the future. Governments seem peculiarly immobile in implementing progressive development for the betterment of the mentally ill.” (In Burdekin, 1991:654) **(19)**

The Burdekin Inquiry would provide, together with the AHMAC. National Task Force, the first National Inquiries in Australia, indeed it is believed in the Western World, which would address not only the subject of social justice and human rights for the mentally ill throughout the nation, but would also include the clients (patients/consumers) themselves and their carers (advocates) in obtaining evidence. The Inquiry was conducted on the premise that:

“Individuals affected by mental illness have the same rights as other members of our community.” (1993 :11)

The strategies, hearings and invitation to make submissions were all undertaken with these rights in mind. **(20)**

-Terms of Reference: are at Appendix 5.2.

-The Commissioners

Mr. Burdekin himself chaired the Inquiry, and was assisted by four Commissioners who are listed and described at Appendix 5.3.

The Framework of the Inquiry.

The framework within which the Inquiry would be conducted, proved difficult to design. While politicians, bureaucrats and economists dearly wished to have a scientific document, well illustrated with piecharts and bar graphs, interspersed with neat, crisp statistics,

Burdekin and his team found this problematical. What mainstream Australia tended to believe was 'mental illness' in 1990, was not necessarily accepted universally. There were several cross-cultural differences, which were magnified in a multicultural society such as Australia had become. Legal definitions differed from State to State and between Territories as shown in chapter one of the thesis (pp6-7). **(21)** Because of the complexity of the issues, it was decided not to define mental illness restrictively, but to adopt an approach which would allow Commissioners to hear a representative range of views, outside the confines of existing and clinical definitions (Burdekin, 1993:11). **(22)** The Report took on an anecdotal framework, within which it would be possible to include evidence indicating abuse or neglect of human rights. Because of this structure, the result was inevitably repetitious.

What the Report did emphasize, by sheer meticulous attention to so many aspects of mental illness, was the need for society to focus on attempting to solve an enormous, complex and urgent problem concerning the denial of human rights and social justice, albeit often unwittingly, to a considerable number of Australians. It demonstrated (unconsciously), the importance of incorporating the marginalized such as the mentally ill within the moral framework of the common good.

The Inquiry

This Inquiry was written against a background of the philosophical, health economics, economic rationalism and social changes taking place. Using the reference point of de-institutionalization, Burdekin decided that the methodology employed would be sociological, relating to aspects of authority, social control, disempowerment, alienation, stigma, discrimination and prejudice. Evidence of any bias would be recorded, using an unstructured interview to provide anecdotal evidence from consumers, carers, professional organisations, non-government and government instrumentalities, and from health professionals, for example, psychiatrists, nurses, occupational therapists and social workers. **(23)** The Report was arranged in five parts; details concerning the chapter contents are to be found at Appendix 5.4. The outcome of the Report highlighted for the Government Working Party, the areas of deficiency and need in mental health care which required to be addressed.

In critiquing the Report, the value system promoted by the Natural Law model has been employed: namely, the basic human goods: life, knowledge, play, aesthetic experience, friendship, and practical reasonableness. This methodology has been used, in order to compare and contrast the findings and conclusions of the Report with what could be done if the philosophical basis of social justice and the common good had been incorporated into the construction of the investigation. Instead, the Report had relied on the legalities of the justice system which aimed to provide only fairness and equality. (24)

Using the Natural Law model, in order to critique Burdekin, we begin with the basic human goods of Life:

-Life: which Finnis states corresponds to the drive for self-preservation (1980:86). Finnis also reminds us of the wide scope of this value; it includes every aspect of vitality which puts a human being in good shape for self-determination (1980:86). This term must surely include the phrase, so beloved of sociologists and health professionals: ‘a quality of life’, a subjective term which implies a standard of living which imparts a feeling of self-dignity and esteem. Throughout the Report, numerous anecdotal evidence from psychiatrists, other health professionals, clients and carers alleged that this was not happening. In relation to Natural Law, a coherent plan of life was not being evidenced. Life was an existence which stretched out drearily from one monotonous day to the next, without the harmonious integration of worthwhile commitments which enable us to live full and satisfying lives.

The examples given by Burdekin, all demonstrated that the mentally ill were not privy always to the common good, and that their human rights were being neglected. Furthermore, no sections of the community seemed to be encouraged to exercise awareness of its responsibilities toward this vulnerable group of people. These examples from the *Burdekin Report* which are listed below, all bore out statements already considered at the beginning of this chapter, including resultant widespread inadequate housing (pp337-398), marginalization (p.445), discrimination (p.446), lack of support and ensuing poverty (p.325). Most of the chronically mentally ill existed on disability pensions and benefits. These monies barely covered the cost of accommodation and food, unless a client was living with an understanding family. The remainder of money left over was insufficient to cover the cost of public transport, clothing, toiletries or dental expenses (Burdekin 1993:325).

“There is no money for leisure activities. Many end up very isolated.” (Muir. In Burdekin, 1993:326)

While life is a good because no human good is possible for the kind of beings we are without it, nevertheless, it may be contested by some members of the community, that for some profoundly mentally ill people, a dreary, lonely, poverty stricken existence is not worth living. This is a significant issue, and raises the question of the respect we show to the value of life for everyone, and the Utilitarian approach to the greatest good for the greatest number. Natural Law is vulnerable, as are the mentally ill to their shortcomings. There is a limit as to what may be done to provide basic human goods in a way that will allow the mentally ill to enjoy a coherent plan for life. One can only do the best that is possible in the face of incommensurability between Utilitarian and Natural Law concepts and practices.

The general approach of the Burdekin Report, however, was Utilitarian, and in these circumstances, it cannot be expected that the Natural Law approach would be applied. It is argued, however, that Natural Law *should* be applied, because otherwise, the mentally ill are not given their due. That is, they are denied the opportunity to enjoy the basic human goods and to thus flourish as persons in order to reach their potential.

-Knowledge: Natural Law as described by Finnis, states knowledge is both a good in itself, an intrinsic good that is considered desirable for its own sake, and is also a means of satisfying one's curiosity and making intelligible one's activity and commitment to that activity (Finnis, 1980:62). Again, Burdekin describes numerous instances of lack of concern for the client by the community, indicating an indifference to knowledge of that individual for his/her own sake. There was shown to be a serious lack of knowledge of mental illness on the part of the community as well as many of the health professionals due to lack of suitable professional education, and inadequate professional post graduate mental health education Only 1 general practitioner (GP.) submitted a statement, together with 3 witnesses. Did the paucity of input from GPs reflect the comment by A. Davis, Executive Officer to the Association of Relatives and Friends of the Mentally Ill (ARAFMI):

"The health system does not identify the mental health area as a special skill in preparing medical graduates for general practice. As the first point of contact by a mentally ill person is usually a GP, this omission is staggering." (Burdekin, 1993 :192) (25)

It would be difficult, however, to sustain an argument that Burdekin's allegations demonstrate an indifference to, or violation of the good of knowledge. Rather, they

demonstrate an affront to this good. The argument in support of knowledge as a good which the mentally ill have a right to enjoy is presented instead in the following manner:

1. Knowledge is an intrinsic good, and thus is pursued for its own sake.
2. The mentally ill have difficulty in pursuing this because of their illness.
3. Genuine concern for the common good of everyone leads us to pursue knowledge for its own sake; for health care professionals there is the added incentive of pursuing knowledge for the sake of the mentally ill.
4. This suggests that a failure to pursue knowledge when it can help is a moral failure; it certainly denies Natural Law.
5. This failure has been to the detriment of the mentally ill. A new approach is needed.

Similar observations to those made about medical graduates were made also about other health professionals. There was considerable input on the role of nurses, mostly from other health professionals, carers and consumers. The Australian Nursing Federation (ANF), spoke eloquently of the benefits that were expected to flow from the transfer of nurse education from hospital based to universities (Burdekin, 1993:194). All undergraduate nursing education had been transferred to the tertiary education sector between 1983-1986, by universal agreement between the Federal and State Governments and the profession itself. (26)

One area which appeared to escape the observations of Burdekin, the Commissioners and the nursing profession itself, related to understanding the nursing needs of a psychiatric specialty unit attached to a general hospital. These needs were not acknowledged by the nursing profession in the comments made by nurses to the investigation. Such a unit needs to be considered in the way that, for example, an obstetric unit is viewed: a unit whose health professionals have the competencies to provide an adequate input of identifiable and relevant knowledge, skills and understandings. At the time of the *Burdekin Report*, every hospital advertising for a Director of Nursing required the candidate to possess a post registration certificate in either midwifery or maternity nursing. Yet there cannot be a hospital boasting a midwifery unit which does not have the support of a staff of trained midwives. At that time, however, not one general hospital in Australia required of its Director of Nursing that s/he should hold a psychiatric nursing certificate (*Hospital Year Book*, 1990). This is significant, because it implies the lack of a recognition or understanding on the part of the professional and Union nursing representative bodies, of

the different skills required to nurse all types of mentally ill patients, compared with those required to nurse generalist patients (Burdekin1993:193-195). For example, if a patient suffering from acute appendicitis is cared for by an uncommunicative nurse who has an unsympathetic manner, provided the surgeon has carried out the operation competently, the patient will make an uneventful recovery, albeit deciding never to return to that institution, if possible, in the future. A patient suffering from either major or minor psychosis, however, if nursed by an unfeeling, harsh and unsympathetic nurse, who is ignorant of the demands of psychiatric nursing, may have his/her recovery impeded considerably, regardless of the quality of the psychiatrist's input. When hospital administration is carried out by those who do not understand the needs of a particular discipline such as psychiatry, shortage of qualified psychiatric nurses can and does result in unqualified psychiatric staff (who may be qualified to undertake general nursing duties), being assigned to acute psychiatric units, where they themselves may feel threatened by their lack of knowledge, while, at the same time, the patients do not receive optimum treatment (Burdekin,1993:262). An inquiry made through the NSW College of Nursing in the year 2004, reveals little if any change in this situation.

This type of information could have been obtained if relevant questions had been asked, but this does not seem to have happened. Interviewees appear to have been invited merely to recount their particular experiences of the mental health system, which was then recorded without any attempt to interpret or to pursue the specific matter any further (Burdekin, 1993:259). Burdekin reported that there was little or no evidence of inservice training for others whose work brought them into contact with clients in the mental health field (1993 :300-1). One of the complaints listed by clients and their carers, related to lack of understanding on the part of many health professionals for the specific needs of the mentally ill, and an inability to cater for those needs. Burdekin recorded the complaints by carers and clients, and the complaint by health professionals themselves of their perceived lack of education. There was no attempt made by the inquiry to analyze the information, which pointed to not only a lack of education, but also inappropriate education (Burdekin,1993: 196).

The specific educational requirements of health professionals such as social workers and occupational therapists in order to work in the mental health field, seem to have been overlooked by health authorities (Burdekin,1993:196). Exposed to a certain amount of

psychology in their undergraduate studies, the professionals had been for the most part, educated in order to work in the 'normal health sector.' They had not been prepared for exposure to the problems of the mentally ill (Burdekin, 1993:191). It is possible that some of them would have read of Derrida's inherited structuralist theory, that signification must be explained in terms of the system that governs it, and the opposition mobilized by that system. In addition, some of them would also have read Derrida's literary criticism of 'differance', and his interpretation of Saussure's theory that purportedly distinguished writing from speech (Richmond in Honderich, 1995:180).

When these health professionals (most of whom would be women), had read uncritically, they were liable to promote postmodernism in the disguise of sociological semantics: 'deconstructing previous discourse and reconstructing it' in a manner that linked postmodernism to the more abrasive aspects of early feminism, in their belief that earlier discourse had promoted patriarchal repression of women (Speedy, 2000:61). Such followers of postmodernist views associated the common usage of the 'medical model' in health care with paternalism and disempowering of women. (27) There is a danger when indulging in empowerment talk that it promotes the exercise of, or importance in gaining power, in order to overcome whatever oppression is perceived. In the individual struggle for power, the powerless are often overlooked. They do not have any power to exercise. This situation encouraged health professionals to promote Nietzschean 'free choices' among the recently discharged mentally ill. Unfortunately, the latter were not able to make free choices, not having any idea what constituted an 'informed choice', since they had been regulated in their everyday activities for most of their lives (Schacht, R. in Honderich E (Ed) 1995:621).

The conclusion which should have been drawn was, that the use of a liberal conception of the importance of the individual and his/her rights leads to the adoption of a utilitarian calculus to balance everyone's interests. In the balancing, the voices of the marginalized are not heard, or count for very little. The blind acceptance of belief in 'paternalism' as the basis of injustice, and self satisfaction with their university education, also led to unprofessional behaviour on the part of some health professionals, who used whatever authority came their way, and diverted attention from the real injustice of 'power' indulged in by both men and women in the health professions, to the detriment of the disempowered mentally ill (Ludlow in Parker, 1999: 154-171). Thus, often without examining the existing

structures, all was to be discarded without a satisfactory framework of support being put into place. Burdekin glossed over these matters, collectively describing them as deficiencies in education, without any observations as to the cause of the problems, or questioning of the evidence being collected, or analysis of the issues raised. Lack of education was reported as existing for the community, including those having to communicate with the mentally ill, for example, government employees, teachers, lawyers, law enforcement officers, and journalists. These categories needed training, because of having:

“Limited knowledge of mental illness or how to deal with difficult or unusual behaviour.” (Burdekin, 1993:196)

Their lack of knowledge, consequently disempowered their clients, denying them social justice and human rights. Burdekin’s Report illustrates the many levels on which the basic human goods were denied to the mentally ill, including those of play, aesthetic experience, friendship and practical reasonableness as shown below.

-Play: in Natural Law, play is believed to contribute to human well being (Finnis, 1980:87). It provides entertainment for its own sake, and has a value of its own. Examples were given throughout the Report of the long dreary days experienced by the mentally ill living in the community (Burdekin, 1993:325). Often without family, ignored by society at large, with only a perfunctory visit from a social worker or mental health team member, countless clients complained of the unstructured, purposeless days which stretched endlessly before them (Burdekin, 1993:315-318). Lack of provision for play indicates again, the lack of knowledge on the part of most of society, of the needs of the mentally ill to inter-act with members of the community.(28)

-Aesthetic Experience: While many forms of play include an element of beauty such as in dancing, beauty is not synonymous with play. It may consist of merely admiring something which is ‘outside’ oneself. For many psychiatrically ill clients, painting is both therapeutic and enjoyable (Burdekin, 1993:323-324). Again, in the joylessness of their community lives, there was little indication throughout the Report that this good was available in the public health system (Burdekin, 1993:315-316).

-Friendship: This has already been discussed in Chapter Two, (pp. 66-67) and is returned to in several parts of the Report. The loneliness of the acutely ill, the terror of not knowing

where they are, and the inability to communicate these feelings are described by clients as truly terrifying. The rejection of them by an indifferent community only adds to their low esteem and poor quality of life. Burdekin particularly emphasizes the isolation of the family who have a mentally ill member (Burdekin, 1993:468). The loneliness of the elderly perhaps suffering from Alzheimer's Disease, or Dementia may be exacerbated by their being accommodated in inaccessible spots, away from their familiar surroundings, and unable to be visited by family members (Burdekin, 1993:515). **(29)**

-Practical Reasonableness: Finnis states that this complex value involves freedom and reason, integrity and authenticity (1980:88). It is both a basic aspect of human well-being and concerns one's participation in all the other basic aspects of human well-being (Finnis, 1980:102-3). The requirements of practical reasonableness are requirements of reason, goodness and human nature (Finnis, 1980:103). Among the reasons why things should or should not be done are: providing a coherent plan of life; a valuation of all the basic values; an equal valuation of all persons; detachment and commitment; efficiency in pursuing the definite goals we have adopted for ourselves, and respect for every basic value in every act (Finnis, 1980: 102-125). These requirements were all discussed in chapter Two, and their headings are replicated here in conjunction with their relevance to the Report. They are significant for carers and health professionals, and indirectly for all members of the community, in that for those acting as advocates for the mentally ill, it is our responsibility to assist them to develop a coherent plan of life, so that they do not drift aimlessly throughout their lives. Within the Report, on countless pages, anecdotes recount the lack of purpose felt by the mentally ill, and the total disregard by the community of their plight (Burdekin, 1993:199-202). There is little evidence of valuation of all persons, so that when a few basic values are ignored, it follows that scant respect is given to the others, and judging from the anecdotal contents of the Report, practical reasonableness is found wanting. For example, with regard to hospitalization itself, there were many complaints that when the psychiatric unit was attached to a general hospital, the staff in accident and emergency departments were not trained to recognize, assess and appropriately assist people with mental illness (Wade in Burdekin, 1993:234). **(30)**

Burdekin discovered an interesting paradox between the State's belief that women, particularly the mothers-no matter how aged they might be, and families in general, provided the ideal carers, unpaid, and unaided, often having given up careers and homes in

order to look after their relations (Hammond in Parker, 1999:79-95). Yet when professional help for the client intervened, either in the form of community or hospital care, the carers' reports of the clients' state of health, behaviour or reaction to drug therapy were frequently ignored, marginalized, and their valuable, intimate knowledge of the client was spurned (Burdekin, 1993:267). This suggests a smug self satisfaction on the part of the professionals, who by their behaviour devalued the patients, carers, and the rest of the community, while at the same time violating the Natural Law concern for the welfare of others.

Admission procedures in 'stand alone' hospitals were reported as being variable and at times positively unsatisfactory. While the Inquiry received evidence of harassment, intimidation and physical abuse, the most frequently reiterated concerns related to the way psychiatric patients were devalued, dehumanized and their views ignored. Many complaints related to the way psychotropic drug therapy within the hospital was used as a perceived control mechanism rather than as a therapeutic measure, and how reports from clients to doctors concerning the side effects of the drugs experienced by them were being completely ignored (Burdekin, 1993:238-247). Patricia Deegan, herself a clinician who became a psychiatric patient, wrote of her experiences in a psychiatric hospital, and described how, as a patient she was not allowed to comfort a fellow patient who was in seclusion (solitary confinement) even to bring him a glass of water.

"If you try ..to comfort the patient...you get an initial warning from the staff, and, if you repeat the violation, you get your 'privileges' revoked for the day." (In Parker, 1999:163)

-Impact on Family relationships and Children.

Earlier in the chapter, on page 245, there was a discussion concerning the significance of the family group in developing the good in relation to children. Burdekin reported on the serious responsibility carried by children who assumed the parent/care role, with the parent/client relapsing into, often, a dependent role. In addition, the children suffered fear, embarrassment, resentment as well as sympathy, disruption of home life and studies, and the whole family experienced isolation because of a curtailment of social activities, stigma and often poverty (Burdekin, 1993:470-501). It was also reported that young children of those affected by a major mental illness are at-risk of developing a mental illness themselves in later life:

"...genetically and environmentally." (Luvy in Burdekin, 1993:499)

Using a sociological framework, Burdekin worked his way through the human rights and need for social justice in relation to the mentally ill among the homeless, women, children and adolescents, people with dual and multiple disabilities, people living in rural and isolated areas, Aboriginal and Torres Strait Islander People, people from non-English speaking backgrounds, forensic patients and prisoners, in that order. In each group, the same overwhelming amount of unstructured, anecdotal evidence was given as already described. Precipitate and unprepared emptying of the asylums, unemployment, lack of educational facilities for re-skilling and education, and lack of suitable accommodation were resulting in high levels of homelessness, which, unless addressed quickly, Burdekin foresaw as developing a culture of its own (Burdekin,1993:548-576). Because each group incorporated several instances of anecdotal evidence, the resultant Report was extremely repetitive and cumbersome, consisting of over one thousand pages. General conclusions to the Burdekin Report were made, and are to be found at Appendix 5.5.

Immediate Recommendations.

The findings were applied specifically to all areas addressed by Burdekin. Recommendations were made with regard to immediate increased funding, increased numbers of, and appropriately educated, health professionals, financial and respite support for carers, research and action concerning, especially, children with mentally ill parents. No suggestions were offered with regard to strategies that might be employed to ensure the correctness of the allegations, or remedy of the deficiencies that had been discussed. Special emphasis was laid on adequate and suitable accommodation and support for the homeless, to break the nexus of vagrancy and the potential for ensuing drug dependency and suicide (Burdekin,1993:916). A massive education program for the community, schools, government workers, health professionals, indeed everyone in society was seen as essential, in order to ensure compassionate understanding of and support for the mentally ill, and of the cultural differences of the Aboriginal peoples and those migrants now living in Australia (Burdekin,1993:923). Involvement of clients (addressed as ‘consumers’ throughout the Report) in planning community programs, together with families and carers was recommended, together with education programs which would enable clients to receive social justice in attempting to reach their potential (Burdekin, 1993:908-946).

Weaknesses of the Burdekin Report.

The result of using a sociological structure was to introduce a weakness in the construct of the investigation. Anecdotal evidence was provided by clients, health professionals, carers, bureaucrats, and related members of the community on all the previously mentioned aspects of sociological methodology, each providing a different view of the same topics. While this emphasized, by weight of anecdotal accounts, the areas requiring investigation from the points of view of social justice and human rights, it provided a repetitious, inconclusive account which was perforce, subjective, and unstructured. Consequently, the Report's findings were weakened, because the entire Report was based on nothing else but subjective opinion. A Report must justify its conclusions: it cannot hide behind mere anecdotal evidence, no matter how serious that evidence may be, or how many examples are given. To keep repeating endlessly, that the mentally ill were being denied human rights, without giving a justified strong moral basis for the practical reasonableness of human rights themselves, to offer such a conclusion without any data on which to base one's investigations, was to leave inconclusive evidence hanging in mid air. If the Commission for Human Rights lacked the facility to analyze facts, there was always the Bureau of Statistics to be invited to assist, whose members were well placed to develop research measures so as to decide, for example, the numbers and types of health professionals required to care for the various categories of mental illness. Related costings could then be made and a reasonable estimate provided of the fiscal cost of maintaining a required health care system in a de-institutionalized medium, compared with what was on offer (Burdekin 1993:136-138). Any government receiving a Report on which there are expectations of action, must be given guidelines as to how implementation of the recommendations might proceed, and a choice of alternative measures to be considered.

By using a sociological framework alone, in other words, a model of ideas, Burdekin made a satisfactory result from his findings impossible to determine. For example, there is no known quantitative research method available to test 'bias' or 'prejudice' or 'stigma.' Is 2/3rds bias more prejudicial and harmful than 3/5ths bias? To recommend that a government should provide more funds, without specific justifications or examples of suggested implementation, is no recommendation at all.

It would have added strength to Burdekin's argument, had he employed a model using Finnis's Natural Law and Natural Rights theory to give some ethical foundation to his observations. As Finnis points out, Natural Law has the added advantage, that when used in

conjunction with social science, it strengthens the latter and gives structure to its use, not leaving social science in a nebulous world of concepts and ideas (Finnis, 1980:18). In terms of Natural Law, if the basic values of practical reasonableness, especially knowledge, were not in evidence, with so many varieties of health professionals and members of society demonstrating ignorance about mental illness, it follows that there was an unawareness of the basic values themselves. The important value of ‘obligations’ and a developed sense of responsibility each for the other in the community, was not manifest. Not surprisingly, such inadequacies had led to stigma and isolation for the mentally ill. A government cannot legislate for implementation or otherwise of concepts such as compassion, bias or stigma, but it can put into place a legal and just framework which will enable Finnis’s Natural Law value system to be implemented by the community. Such a value system is instantly recognizable by all, and enables the common good to flourish for the benefit of all members of the community, including the marginalized and deprived groups such as the mentally ill.

Burdekin, however, did not refer to or employ a Natural Law model nor did he recommend any similar model, which suggests that nothing similar was called to mind. Repeatedly, carers, clients, psychiatrists nurses and health workers, as well as members of the community, gave their own versions of social injustice and abuse of human rights, but there was no yardstick provided by which they might be measured. Were clients being stigmatized and discriminated against, or were the examples they gave, illustrations of thoughtlessness on the part of society? Did they require more nurses and health workers, or was inappropriate education of all concerned hampering communication between the two parties? These problems were not addressed adequately.

Not all was negative criticism. There was a heartfelt tribute to dedicated psychiatric care, although it was acknowledged that it took fourteen years to find this particular psychiatrist (Leslie in Burdekin, 1993:148). The reason, despite poor salary structure and exhausting case loads, that psychiatrists remained (even in small numbers) in the public sector was firmly stated as because:

“They have a commitment, even a passion, for the rights of the mentally ill.” (Leonard in Burdekin, 1993:173).

Praise was also heaped upon non-government organisations (NGOs), who were struggling to support, for example, adequate accommodation for patients with dementia, although such

projects were unable to answer the enormous needs of the community (Burdekin,1993:521-524). Here again, no questions appear to have been asked of the NGOs with regard to the numbers applying for admission or the size of the waiting list, all of which would have added weight to the findings (Burdekin,1993:530-531).

While the Inquiry was the first of its kind to highlight the realities of how neglecting to support social justice and human rights affected the lives of the mentally ill, it needed to be tighter, more succinct, and definite in its construction. The Report demonstrated, unconsciously, that under all the rhetoric, there was a serious ignorance of what the concepts of social justice and human rights represent in terms of Justice, within both Enlightenment and Natural Law contexts. Because of its anecdotal construct, scepticism was allowed to filter into the criticisms of its findings. Burdekin conceded that there would be some of the witnesses who exaggerated, who were biased or even fabricated some of the evidence, but he believed that the sheer weight of similar accounts must surely point to a need for investigation. Circumstantial evidence was indeed persuasive. The Report, however, is an unstructured and emotive work, which makes it difficult to follow a line of argument logically and dispassionately. The inability of the Inquiry to contain any firm qualitative or quantitative data caused it to be condemned in many political and economic circles. Health economists, educationalists, and sociologists alike poured scorn on the general and unspecified conclusions. An example of their attitude is to be found in the 1995 report by Dr. John Paterson, Secretary of Victoria's Department of Health and Community Services to the Victorian Parliament. An extract was subsequently published in *The Age*, with the caption:

"The simplistic cry 'give us more money' chant of the mental health lobby must be ignored. It is giving human rights a bad name." (Department of Health, Victoria, 1995) **(31)**

Dr. Paterson's vituperative account was indicative of criticisms received from all the other States and Territories. In fairness to Burdekin, it is appreciated that Paterson and others of his economic persuasion, are for the most part concerned about public spending and accountability for the use of taxpayers' money in the Welfare sector. That the principle of subsidiarity (described in Chapter Two, p.61), seemed to be ignored during the great wave of Welfarism immediately after the Second World War is acknowledged. That is, recipients of welfare often appeared to receive more from public enterprise than the material product of their own private efforts might have been (Chapter Two, **fn81**).

The answer by State Governments, such as in Victoria, was to introduce competitive tendering for services: that is contestability measured by empirical means (Holler, 1998:30). As the Federal Government described the process, any government funding in the welfare sector should be based on ‘testable defined outputs’, on the establishment of ‘benchmark standards’ of service, and through the ‘monitoring of performance’ (Holler, 1998:30). In answer to Dr. Paterson and his confederates, it is argued that there is manifest here, a clash between two incommensurable views described by John Holler as:

“(One) atomist, individualistic, analytic, materialist, controlled; the other by contrast, as organic, holistic, spiritual, vulnerable.” (Holler, 1998:33)

Here the claims of reason appear to be dominant, while those of faith are being ignored, to the detriment of the common good and the whole person. If one is to accept the argument for ‘measurable outcomes’, how is one to measure the value of a human life? It cannot be measured in dollars. One of the basic problems of empiricism is that:

“Measurement can tell the height and weight and speed and temperature, but it cannot tell value.” (Holler, 1998:33)

Is a family which is fiercely competitive and efficient more successful than one that works through compassion and collaboration? Evaluation then is different from measurement; it requires more sensitivity than measurement can offer, and respects narrative as much as fact. It is argued that it was precisely this point that Burdekin apparently was attempting to make when he chose the narrative, anecdotal format in which to launch his campaign for social justice and human rights for the mentally ill. Karl Polanyi stated in his study of the political and economic origins of our time:

“To allow the market mechanism to be the sole director of the fate of human beings and their natural environment...would result in the demolition of society.” (In Holler, 1998:33)

It is the ‘market mechanism’, nevertheless, which is currently driving health care, not in terms of benefits to the health status of patients and the community at large, but in terms of fiscal benefits to stakeholders in the ‘health industry’ to the detriment of social justice, human rights and the common good of society. This was discussed in relation to economic rationalism in Chapter Four (pp.194-198). Unfortunately, the vague generalities of a totally unstructured, anecdotal investigation, made Burdekin’s attempts to highlight the human rights and social justice issue appear nebulous and impractical, in terms of providing adequately researched and competent conclusions. To offer a government one thousand pages of anecdotes which repeat endlessly that more money is required without specifying in what areas it is needed and why, and how human rights and social justice are being

inadequately provided for the mentally ill, in the current economic, social and political climate, is no Report at all. There is insufficient evidence for immediate action to take place.

Burdekin is far too general, so that, for example, when condemning deficiencies in mental health care practices as being socially unjust, there is no specific definition of the principle of social justice against which he is railing. This indeed, is one of the Report's great shortcomings, that despite Burdekin's constant reference to social justice, he has not defined the principles of social justice in any terms, but especially, he has neglected to define those principles in terms of a moral foundation. When measured against the Natural Law model recommended throughout this thesis, it may be seen that had this model based on Finnis's theory of Natural Law been employed, a more succinct Report would have ensued. It would have highlighted all the areas of deficiency: the requirements of a value system, the common good, and practical reasonableness, and could have justified the recommendations Burdekin made, by placing them on the more solid basis of a philosophical foundation. Instead, Burdekin has offered countless examples of what is wrong with health care policy and delivery, but has shied away from offering a means for rectifying the sorry state of affairs. In summary, the Report is inadequate, inconclusive and a serious disappointment, having promised so much.

Political initiatives to address mental health care issues: the AHMAC. TaskForce.

All was not lost, however; even while the Inquiry was in progress, the Federal Minister of Health, in collaboration with the State/Territory Ministers, began taking steps to advance a planning program for Mental Health throughout Australia. By 1990, the then Federal Minister of Health, the Right Honourable Brian Howe, a man of great integrity in political and public life, who was also by conviction a Methodist and a strong advocate of Social Justice, was determined to improve mental health care. He was in a unique position, politically, to view the destruction of social and family life that mental illness can inflict, having held the portfolio as Minister for Social Security before accepting that of Health.

In consultation with all State and Territory Ministers of Health, Brian Howe placed Mental Health Issues on the agenda for discussion at the annual Australian Health Ministers' Advisory Council Meeting (AHMAC), in 1991. At that meeting, a report was to be received from a Task Force which had been convened by Howe under the Chairmanship of Professor

Beverly Raphael, who held the Chair of Psychology within the School of Medicine, Queensland University.

Raphael, through the Mental Health Consumer Outcomes Task Force, reported to AHMAC. in 1991, that people with mental illness problems and mental disorders, together with their families, were not experiencing the full support they required. Equity, access and social justice were frequently unavailable to them. Yet one in four Australian citizens were estimated by the Taskforce to be affected by these health problems. Raphael asserted that mental health is a positive asset for the whole community, enhancing the opportunity for individuals to love, work and play in ways which provide for the fullest achievement of their capacities (Foreword *Mental Health Statement of Rights and Responsibilities, 1991-MHSRR*-). This assertion will be returned to later in the chapter.

Each of the areas identified by Burdekin as being in contravention of human rights substantiated the findings of the AHMAC Taskforce, and re-inforced that Taskforce's National Mental Health Strategies, Policy and Planning steps to be undertaken nationwide—surely a tribute to Burdekin's initial work, however unstructured and inconclusive his results may have been. AHMAC was left in no doubt as to the size of the problem it was now to confront. The Better Health Commission was reported by MHSRR, as noting that 25 per cent of the population were likely to suffer from emotional or psychological disturbance at any one time, and that of these, approximately 15 per cent suffered from diagnosable mental disorders, with women being in the majority.

“12 per cent of children may suffer from mental disorder, and 15-25 per cent of all days in hospital are attributable to clients with mental disorder, for many of whom, the general practitioner has been the first professional health contact.” (MHSRR, 1991:6)

AHMAC was reminded that most people having a mental health problem, suffer from one episode only, and may recover completely. The community, therefore should not envisage mental illness as lifelong illness or an impossible hurdle to living a normal life (MHSRR, 1991:viii). Nevertheless, some people would become disabled as a result of mental disorder.

In twenty four succinct pages, Dr. Raphael outlined the findings of the Task Force, and the aim of:

“Promoting social justice, equity, access and a compassionate society with mental health as a primary goal.” (MHSRR 1991:iii)

These sentiments, however, would remain hopeful platitudes, unless specific measures could be outlined in order to identify, quantify and implement them. Raphael did not spend endless pages on retrospective accusations. Because of the numerous and detailed anecdotal evidence submitted by Burdekin, Raphael was able to accept the countless complaints made by carers, clients and health professionals, and to direct her preference to considering that de-institutionalization had itself redefined a new and unstructured mental health care scenario (NMHSRR,1991:1-21). Therefore, the aim of the Task Force was to be proactive, focusing on what must be the essentials for future mental health care. Incorporated within the Statement of Rights and Responsibilities submitted to AHMAC, consequently, were specific areas covering relevant statements balancing rights and responsibilities, and foreshadowing future directions (NMHSRR, 1991:1-21). (32) All these areas were seen as in need of valid research, so that the countless assertions voiced within the Burdekin Report could be investigated, and an acceptable conclusion made as to their veracity. Within the NMHSRR, were incorporated, for example, with regard to the rights of consumers:

To have explicit standards set for all sectors of delivery (and these) should have operational criteria by which they can be assessed ... (Mechanisms of review) should be used for evaluation of services, including both the process of service provision and the outcome of treatment. The consumer has the right to have services subjected to quality assurance to identify inadequacies and to ensure standards are met.... (and) the right to expect...adequate levels of professionally trained and qualified staff in mental health services...(together with) further development of staff knowledge and skills. (1991:11)

In April 1992, members of AHMAC, agreed at their annual meeting that a major reform process was needed urgently in relation to mental health care services in Australia, and unanimously endorsed the National Mental Health Strategy (NMHS).

National Mental Health Strategy.

The Strategy was to provide a co-operative program between Commonwealth, State and Territory Governments. The aim was to provide a framework within which subsequent planning would address the alleged shortcomings in mental health care already outlined in the Burdekin Report. Two five year plans were agreed upon by AHMAC; the first five year plan spanned the years 1992-93, to 1997-98, and covered the years of the Medicare Agreements the effects of which are explained on Pp.277,280, and **fns 36-41**) of the thesis. The second five year plan covered the years 1997-98, to 2002-03, and incorporated the Australian Health Care Agreements which superseded the Medicare Agreements (National Mental Health Report –NMHR- 2002:6). These financial arrangements would bring mental

health care into mainstream health care fiscal provisions for the first time. The Strategy was described in four policy documents:

- National Mental Health Policy*, which defined the broad aims and objectives of mental health reform, and promoted a shift from institutional to community care. Agreement to this document was reached in April 1992, and represented the formal commencement of the Strategy (NMHR, 2002:6).

- Mental Health Statement of Rights and Responsibilities*, which endorsed the principles of United Nations Resolution 98B (*Resolution on the Protection of Rights of People with Mental Illness*). This document was agreed to by all health ministers in 1991, and confirmed their philosophical acceptance of civil and human rights (NMHR, 2002:7).

- The First National Mental Health Plan*. This provided an action plan for the periods 1992-3, to 1997-8. It described the methodology Commonwealth, State and Territory Governments would employ in order to implement the aims and objectives of the National Mental Health Policy (NMHR 2002:7).

- The Medicare Agreements*. These defined the Commonwealth, State and Territory roles in achieving reform of mental health services during the first five year national mental health plan, and also defined conditions for transfer of federal funding to assist in the reform process (NMHR,2002:7).

During the period 1993-1998, the Commonwealth Government provided in excess of \$250 million in support of the first mental health plan. Annual National Mental Health Reports described the extensive changes in the mix and delivery of mental health services that were being commenced during those first five years. Within this context, the first National Survey of Mental Health and Wellbeing was commissioned and the adult section conducted in 1997. Adults aged 18-99 years were surveyed by trained interviewers from the Bureau of Statistics. The interview technique was similar to that used in Canadian and US surveys, so that international comparisons might be made and used by WHO. (Commonwealth Department of Health, 1997). This information would be complemented later by the results of studies of the mental health of school age children and adolescents similarly published by the Department in 1999 (1999:3). In this way, Australia would have independent and relevant information, and no longer rely on data from overseas that might not be entirely pertinent to the local scene.

In similar manner, AHMAC commissioned a Rights Analysis Instrument to evaluate State and Territory mental health legislation, (33) and this was prepared in December, 1996. The Instrument was designed to measure compliance by legislation with the 1991 United Nations: *Principles for the Improvement of Mental Health Care*, and also the *National Mental Health Statement of Rights and Responsibilities* (AMHR, 2000:1).

Development of an acceptable methodology took considerable time to complete and a revised Rights Analysis Instrument was endorsed by AHMAC in 1997. Seven out of eight jurisdictions applied the Instrument to their legislation: Tasmania, New South Wales, Victoria, Western Australia, the Northern Territory and the Australian Capital Territory. Queensland was in the final stages of drafting a Mental Health Bill and did not wish to apply the Instrument to old legislation. The Instrument would be applied once the new legislation had been passed in Parliament (National Mental Health Strategy, 2000:1). Multi-disciplinary panels in each jurisdiction applied the Instrument. They consisted of: a consumer; a human rights expert; a lawyer familiar with mental health legislation; a Non-Government Organization (NGO), service provider; a clinician; an advocate; a carer, and a government official from the mental health area. (34) AHMAC concluded that the application of the Rights Analysis Instrument methodology to the area of mental health simplified the exercise of refining accountability through measurable performance standards. (35)

The AHMAC National Mental Health Strategy Evaluation Steering Committee reported to AHMAC in 1997, that while these changes placed Australia internationally as a leader in mental health care reforms, not all objectives had been met, and the reform agenda was still incomplete. This was understandable: two hundred years of entrenched societal behaviour toward the mentally ill could not be changed within such a short time frame.

The recommendations for reform had been made, and measures were being undertaken to promote the necessary changes to mental health care in Australia. The painstaking efforts by the Raphael Task Force to provide practical forward planning strategies contrasted with the ineffectiveness of the Burdekin Report. Where Burdekin was emotional and recriminatory, Raphael was practical and proactive, providing a blue print for future action. However, the sheer mass of anecdotal evidence uncovered by Burdekin did indeed, as Dr

Raphael herself acknowledged, speed up the reform process, and make the Federal and State Authorities aware of how enormous the task ahead would be.

-Second National Mental Health Plan, 1998-2003.

This plan was endorsed by AHMAC, in 1998. The First National Mental Health Plan had addressed the needs of of the 3% of Australians who experienced serious mental illness. The Second Five Year Plan aimed at expanding the focus to incorporate the 20%+ who suffered a mental disorder, and emphasized the importance of mental health promotion, community education, prevention of illness and early intervention (NMHR2002:7).

Inadequacies in the wording of UN Principles were still problematic to the National Panel. The UN had not anticipated future developments and improvements in practice, which is not surprising. The Principles had been developed globally, and accommodated differing levels of social change and development between countries. This did not prove an insurmountable obstacle to Australia. Provided the wording was in keeping with the intention of the original Principles, the human rights protections could be extended (National Mental Health Strategy, 2000:4).

5. Current Mental Health Care in Australia in relation to Social Justice, Natural Law and Human Rights.

Following the National Mental Health Strategy, 1993-98, which developed out of the Task Force recommendations, the Federal Government developed a specific Mental Health and Special Programs Branch within the Federal Department of Health, and has documented Australia's progress over recent years. The National Mental Health Strategy was reindorsed by AHMAC in 1998, and plays a vital role in maintaining the focus on this concern. Annual National Mental Health Reports are published, as a demonstration of the accountability of Commonwealth, State and Territory Governments to the community. Reforms being undertaken as part of the Second Mental Health Plan form part of the current mental health care in Australia. (36)

- *Spending.*

National spending on mental health increased by 30% in real terms during the period of the first National Mental Health Plan, and by 44% during the second National Mental Health Plan. The main driver has been the growth in costs of psychiatric drugs provided throught the Pharmaceutical Benefits Scheme (PBS), a staggering increase of 402% (National

Mental Health Report, 2002:6-7). All the annual National Mental Health Reports have acknowledged that providing finance alone does not reform and answer the needs of a complex and on-going service area such as mental health care. There needs to be a corresponding recognition of the needs of those providing care, both professional and voluntary carers, of the continuing educational needs of the community, as well as monitoring of the standards of care, to ensure that the mentally ill are not falling behind the care given to other citizens (National Mental Health Report, 2002: 10-12). Consequently, careful reporting has taken place also of the following areas:

- *State/Territory shift to community treatment and support services (37);*
- *Reduction in size of separate psychiatric institutions (38);*
- *Reduced isolation of mental health services from the mainstream health services (39);*
- *Increased consumer participation in decision making (40);*
- *Expansion of psychiatric disability support services (41);*
- *Savings from reduction in institutions redirected to new services (42);*
- *Evaluation of current mental health care (43).*

This Mental Health Report, 2000, had also highlighted areas in which the Strategy had made minimal progress or failed to deliver expected results during the first Mental Health Plan:

There is concern that current services fall short of the Strategy vision for Australia...Many areas are yet to experience a tangible benefit from the National Mental Health Strategy reforms...Concerns about poor service quality and client outcomes have only begun to be addressed...there is (still) widespread dissatisfaction with many aspects of mental health services in Australia...Consumers continue to report problems with access to services, poor service quality and stigmatizing staff attitudes...Carers feel they have been left behind in service developments, while providers struggle to find ways of responding to an apparent escalation of demands upon their limited resources...Primary care practitioners complain of the insularity of mental health providers, both public and private...Little assistance is available to them in managing the burden of mental health problems in the community which do not 'qualify' for specialist psychiatric care...For the community .the mental health system remains relatively feared and unknown and, according to consumers, continues to stigmatize and discriminate against those affected by mental illness. (National Mental Health Report, 2000:11)

These complaints were acknowledged in the National Mental Health Report, 2002, which has suggested that, without a strong societal support system, community attitude has changed little towards stigmatizing and discriminating against the mentally ill. A lack of education across the whole range of society still required to be addressed, starting with the family unit, targeting priority areas such as Youth Suicide and Depression, and including tertiary education for journalists, in order to develop a more ethical and positive way in

reporting incidents involving the mentally ill than has been observed hitherto (National Mental Health Report, 2002:153-162). **(44)**

Any mental health system will only ever be as good as the planners and users make it. It must be acknowledged that both Commonwealth and State judiciaries have worked hard over the past fifteen years to rectify the deficits facing them at the beginning of the NMHRS). For example, at the beginning of the Strategy, few State and Territory jurisdictions maintained information about the activities of, and patients treated by, publicly funded mental health services. At the national level, no data were available to inform policy and planning decisions (National Mental Health Report, 2002:164). Consequently, National Minimal Data Sets for Mental Health Care were identified early as a priority for development. The basic data sets are collected and pooled nationally, the first collection being made in 1997-1998. **(45)**

One of the limitations of the Report, however, which is freely acknowledged, is that while it provides detailed information about the performance of the Commonwealth and of each of the State and Territory jurisdictions in implementing the policy directions agreed under the Strategy, it does not inform about outcomes, or whether the policy jurisdictions are achieving the intended benefits for the community (National Mental Health Report 2002:13). The Report states that it believes that judgements about mental health outcomes are complex and require a longer term timeframe that goes beyond the annual reporting cycle that underpins the Australian Health Care Agreements (National Mental Health Report, 2002:13). Much more emphasis is now to be placed on developing a capacity to report on outcomes in the future, both at the individual client level, and also for whole populations (National Mental Health Report, 2002:13). When one considers the state of mental health care in the early 1960s with the attempts being made to rectify the shortfalls now, it must be acknowledged that while much still needs to be accomplished, much has been achieved in promoting human rights and social justice for the mentally ill.

It is suggested, however, that as with the Burdekin Report, it would have clarified the aims and objectives of the National Mental Health Strategy if a definition had been provided for 'social justice.' When a community is coming to terms with a radical change in attitude toward a section of that society, such as the mentally ill, it is essential that all members of the community can agree on what precisely their goals represent. **(46)**

While the National Mental Health Strategy has competently identified the many areas requiring to be recognized, researched and deficiencies remedied, it has undertaken this work from a purely rational point of view. Burdekin developed a sociological framework within which to outline the many ways in which social injustice was being perpetrated on the disadvantaged mentally ill. Raphael has attacked the problems of mental illness from a psychological aspect. Consequently, Raphael has acknowledged the psychologically holistic needs of the individual to include, for example, play, recreation and friendship, but both investigators have steadfastly ignored the philosophical need of a value system, to which these attributes might be anchored. Such a remedy is offered in Finnis's Natural Law and Natural Rights theory. The model that has been devised, has been demonstrated in this chapter to work well in supporting mental health care. It is believed that it would be equally successful if used in all the areas of mental health care shown by Raphael as needing to be addressed. Such a Natural Law Model, if included in both the Reports, and in all subsequent investigations, would have given the community, politicians and health professionals a substantial base on which to build for mental health care in the future. In both cases, a great opportunity to change the attitude of the entire community to our treatment of disadvantaged groups has been wasted. To have included all the segments of Finnis's Natural Law Theory, with its basis of the common good, would have given a concrete rationale as to why the disadvantaged should be treated as all other members of society. It would have acted as a yardstick by which to measure, for example, political and economic actions described as 'socially just' or 'unjust' when politically or economically expedient.

In current circumstances, there is no obvious moral obligation on the part of the government to insure that pressure will be maintained in order to obtain the required remedies. This may be instanced in the politically 'vote catching' move undertaken in Tasmania in 2004. The sum of \$2 million has been allocated to the development of a football stadium in North Tasmania, together with \$5 million for a sports complex. (*The Advocate*", 16 June, 2004) For an almost non-existent mental health service, \$800,000 has been allocated. Surely an exercise in political expediency, and an example of the lip service paid by politicians and the community to 'social justice' and the needs of a disadvantaged group who are being deprived of the common good. While the needs of play and recreation are indeed part of a Natural Law value system, the facilities mentioned are

already in existence. In some parts of Tasmania, mental health services have yet to be developed.

6.Conclusion.

In the introduction to this chapter, it was stated that the aim would be to determine whether the prevalence of human rights talk as implemented in the *Declaration of Human Rights*, would be sufficient to guarantee social justice for the disempowered mentally ill members of the community. It has been shown, that social justice itself is the manifestation of a value system, such as is provided by the philosophical view of Natural Law and Natural Rights as described by John Finnis (1980). By implementing a model demonstrating the interrelationship of the components of Natural Law and the community, it has been shown that the common good of all produces justice for all; that is, social justice. This theory is needed in order to measure the reforms that have been instigated by AHMAC in the mental health sector of Australia since 1995 against the obligation to provide social justice which all members of the community owe to the disempowered mentally ill. This has not occurred.

In all fairness to both Reports with regard to the general and professional (Report, Australian Broadcasting Commission, November, 2002). dissatisfaction with mental health care, demonstrated in the *AHMAC and Burdekin Reports*, two hundred years of Utilitarian neglect and mismanagement cannot be remedied in fifteen years, especially during a period of economic downturn and unemployment, and within the completely untried and unprepared environment of the community. Psychiatry and psychiatric health care are not preferred options of work for the majority of Australians, and a media hungry for sensationalism does not assist this sector. Shortages of beds during the year 2002, have resulted at times in, for example not one bed vacancy throughout NSW (Report, Australian Broadcasting Commission, November, 2002). In South Australia, it was reported that psychiatric patients, unable to be offered suitable professional care and accommodation, were shackled to their beds in general wards, because nursing staff had no idea how to care for them and lacked the time to give to them (Report:The Australian, October, 2002).

Economic rationalism developed during the 1980s and driven by the philosophical Enlightenment theory of individualism has produced an egocentric community of 'winners' and 'losers' (Glendon, 1991:109-144). It is contended, that without a change in

philosophical theory to one which espouses the common good of all persons, and a value system such as has been described by Finnis, then the massive re-education of the community required to understand mental illness, together with the acceptance of the mentally ill as equal members of society will remain a pipe dream. Stigmatization, bias and poor service will continue. A foundation support of Natural Law by an infusion of moral justification, would strengthen the human rights argument, which currently seems to wax and wane, according to whether the political support is available or not. Natural Law would also add moral fibre to the social justice debate, taking it out of the emotional environment, and justifying both rights and obligations for all members of society. It would provide the necessary interpretation of justice itself, which is so lacking currently, and would offer the compassion which seems to have vanished from both public and private life in Australia.

(47)

Within this chapter, the attention to human rights in Government policy and research as a manifestation of Enlightenment theory has been investigated. The Governmental consultative policy and the *Burdekin Report* were the culmination of widespread dissatisfaction at government, professional, educational, consumer and advocacy levels, that had been rapidly growing in the process of de-institutionalization, which had made mental health and illness, no longer hidden within asylumdom, an overt problem.

The groundwork had been laid, therefore, for positive action to be taken in implementing national health strategies and policy, and to addressing the recommendations of the *Burdekin* and *AHMAC* Reports. These processes, however, were the easy part of the plan. The needs of the mentally ill were now explicit in Government and Burdekin Reports. The difficult phase would be to implement the proposals, which would rely on the knowledge, skills and understanding of all sectors in order to motivate and to provide an in-depth response. It would also require co-operation with an educated community, able and willing to support the mentally ill during a psychiatric episode. What is lacking in the National Mental Health Strategy is the reporting of outcomes emanating from the many worthwhile areas under investigation. This is freely acknowledged by Raphael ((National Mental Health Report, 2002:17). Such reporting would have made it possible to measure the AHMAC aims against the requirements of a Natural Law value system.

While there was going to be negative criticism, and some State Governments might seem to be slow in instigating reform in what appeared to be obvious areas of need, from a social justice point of view, the increased and targeted funding which was now put in place, represented an essential first step in providing the mentally ill with the rightful health care which had to be implemented, if the people's political representatives were to demonstrate that they genuinely were prepared to work for the common good of all. Whether they are so prepared has yet to be proven.

It is true that some areas were now to the forefront to which, hitherto, only lip service had been offered, such as providing for adequate discharge planning when clients were discharged from psychiatric units or stand alone hospitals, back into the community after preparatory care. Such individuals, however, wrestling with independence (isolation) in an unfamiliar community setting, faced with forgotten or unknown daily living tasks such as shopping, budgeting, and finding employment, were still often unable to cope with this situation. Unless there was adequate communication and involvement with sufficient numbers of competent and compassionate health professionals as well as other members of the community, a lonely and friendless person could be lured into the penal system unwittingly, as a result of manipulation by the unscrupulous. S/he could also drift back into the hospital having neglected to take the necessary medication, which modifies psychiatric symptoms and provides acceptable behaviour in the community.

Regrettably, within society, the human being does not always wish to exert him/herself in caring for the mentally ill; does not always wish to share financial or cultural gains, or even have the mentally ill live near us. ('They are noisy and cause a depreciation in the value of property,' is a widely held perception of this section of the community). With such variation in the community's reaction to mental illness, rights talk and social principles as decreed by Enlightenment theory have been shown to be inadequate unless reinforced and implemented by practice of the common good.

Within this chapter, an attempt has been made to weigh up the needs of the mentally ill as expressed in two national reports, and to consider how the principles of social justice and human rights are relevant and may be appropriately applied to mental health care, within the National Mental Health Strategy. An attempt has also been made to apply a Natural Law model, related to Finnis's Natural Law theory, which would give a philosophical basis

to mental health care, in order to safeguard the clients' and community's needs in equating rights with responsibilities, protecting social justice in the common good, and providing justice for all. It is asserted that this philosophical basis is essential. A report, no matter how scientific and impressive its presentation may be, can only reflect the intentions of government policy. The implementation of the common good, the desire to promote both rights and obligations, the promotion of social justice and compassion in our dealings with mentally ill, can only come from an unconditional love of our fellow human beings. It cannot be legislated for. What can be respected, legally, is the movement toward international legal recognition of human rights as expressed in the United Nations Declaration, to which many references have been made within this chapter, and which are granted as expressions of the individual's humanity (Dickenson in Parker, 1999:71). The aim is that a nation state shall respect human rights 'in practice,' (Article 2) not just in theory, and certainly not merely as a signature to a worthless piece of paper. In the current situation of cynicism that exists in the Western world, this seems a forlorn hope, unless the stability of a philosophical theory such as Natural Law can be put in place to reinforce and stabilize a very shaky foundation, and indicate a hopeful ethical pathway to a very confused society.

APPENDIX 5.1

MENTAL ILLNESS PRINCIPLES

Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care were adopted by the United Nations General Assembly in 1991.

The Principles were to specify that they were to be applied:

without discrimination of any kind such as on grounds of disability, race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, legal or social status, age, property or birth (Burdekin, 1993:32).

That people being treated for a mental illness must be accorded the right to recognition as a person before the law. (Principle 13)

The Principles re-affirmed that individuals who have a mental illness or who have experienced mental illness have the right to protection from:

- exploitation-whether economic, sexual or in other forms;
- abuse-whether physical or in other forms; and
- degrading treatment. (Principle 1.3)

The Principles provided that

All persons have the right to the best available health care, which shall be part of the health and social care system (Principle 1.1, Burdekin, 1993:33).

and that:

every patient shall have the right to receive such health and social care as is appropriate according to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons (Principle 8, Burdekin, 1993:33).

While they focus primarily on human rights in relation to the mental health system, the Principles also stipulate:

- that every person with a mental illness has the same basic rights as every other person, specifically including the rights set out in the International Covenant on civil and political rights and the rights recognized in the Declaration on the Rights of Disabled Persons. (Principle 1.5)
- that discrimination on the basis of mental illness is not permitted. (Principle 1.4)
- that every person with a mental illness has the right to live and work, as far as possible, in the community. (Principle 3)

APPENDIX 5.2

TERMS OF REFERENCE FOR THE BURDEKIN NATIONAL INQUIRY INTO
THE HUMAN RIGHTS OF PEOPLE WITH MENTAL ILLNESS.

1. To inquire into the human rights and fundamental freedoms afforded persons who are or who have been or are alleged to be affected by mental illness, having due regard to the rights of their families and members of the general community.
 2. In particular, to inquire into the effectiveness of existing legislative provisions, legal mechanisms and other measures in protecting and promoting the human rights of such persons.
 3. To examine the respective roles and responsibilities of Commonwealth, State and Territory Governments in these areas,
 4. Without limiting the generality of the preceding terms, to consider:
 - (a) any discrimination on the basis of mental illness in Commonwealth laws or programs;
 - (b) any discrimination in employment, occupation, accommodation or access to goods and services on the basis of mental illness;
- © human rights in relation to institutional and non-institutional care and treatment of persons with mental illness.

APPENDIX 5.3

THE COMMISSIONERS

- Chairman of the Inquiry: Mr. Brian Burdekin, Federal Human Rights Commissioner, assisted by:
- Dame Margaret Guilfoyle: President of the Royal Melbourne Hospital, and currently Deputy Chair of the Victorian Mental Health Institute. Formerly, senator for Victoria (sixteen years), during which time she was Federal Minister for Education in 1975, Minister for Social Security, 1975-1980, Minister for Finance 1980-83. Dame Margaret is also a Director of several charitable trusts and a Member of the Council of Deakin University.
- David Hall: Executive Director of the Richmond Fellowship of Victoria, and the first convenor of the National Coalition of Mental Health and Psychiatric Disability Groups. Mr. Hall had an extensive background in social welfare work, including responsibility for the co-ordination of welfare services with a number of government departments at both Federal and State level.
- Professor Beverley Raphael: special adviser to the inquiry. Professor Raphael, at that time Head of the Department of Psychiatry at the University of Queensland, was formerly President of the Royal Australian and New Zealand College of Psychiatrists and currently was a member of the National Mental Health Working Party for the Australian Health Ministers' Conference. She also chaired the National Health and Medical Research Council's Mental Health Committee. Dr. Raphael is currently Director of the Centre for Mental Health, NSW Health Department.
- Professor Neil Rees, Dean of Law, University of Newcastle, Professor David Copolov, Victorian Mental Health Research Institute, and Mr. Simon Champ, Schizophrenia Fellowship of NSW. also provided substantial advice and assistance in reviewing sections of the material included in this report.

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APPENDIX 5.5

GENERAL CONCLUSIONS TO THE BURDEKIN REPORT

- People affected by mental illness are among the most vulnerable and disadvantaged in our community. They suffer from widespread, systemic discrimination and are constantly denied the rights and services to which they are entitled.
- Individuals with special need –children and adolescents, the elderly, the homeless, women, Aboriginal and Torres Strait Islander people, people from non-English speaking backgrounds, those with dual or multiple disabilities, people in rural and isolated areas and prisoners- bear the burden of double disadvantage and seriously inadequate services.
- The level of ignorance still associated with mental illness and psychiatric disability in the 1990s is completely unacceptable and must be addressed.
- In general, the savings resulting from deinstitutionalization have not been re-directed to mental health services in the community. These remain seriously underfunded, as do the non government organisations which struggle to support consumers and their carers. While the movement towards mainstreaming mental health services may alleviate the stigma associated with psychiatric care, there is a serious risk it will not receive the attention it so desperately needs.
- Poor intersectoral links, the ambivalent stance of the private sector and a reluctance on the part of government agencies to co-operate in the delivery of services to people with mental illness have contributed to the alarming situation described in this report. While the Inquiry welcomes the initiative recently undertaken by governments in endorsing a National Mental Health Policy and Plan, a major injection of resources will be needed before we are in a position to comply with our international obligations under the UN Principles for the Protection of Persons with Mental Illness (Burdekin, 1993:694-695).

APPENDIX: 5.6CLARIFICATION OF THE SIGNIFICANCE OF FINNIS'S NATURAL LAW THEORY AND ITS POTENTIAL TO BENEFIT MENTAL HEALTH CARE.Introduction

In Chapter Five, the Natural Law model described in Chapter Two has been applied to critiquing the outcome of two influential national Reports on mental health care in Australia. These two Reports, the Burdekin and AHMAC Reports focused on human rights and social justice for the mentally ill, and represented a culmination of dissatisfaction within the community by clients, carers, relatives, health professionals, and the mentally ill themselves with the process of implementation of de-institutionalization during the 1950s and 1960s.

In designing the framework for the Burdekin Inquiry, Burdekin had decided that the methodology employed would be sociological. This decision was taken because of the uncertainty of the term 'mental illness', which had differing legal definitions from State to State and between Territories, and several cross-cultural differences which were magnified in a multicultural society. There was also an almost complete absence of statistical evidence concerning mental health care.

To write a Report merely on a sociological basis, no matter how much anecdotal evidence may be offered is to present a Report based on vague generalities and nebulous ideas, which make Burdekin's attempts to highlight the human rights and social justice issues appear idealistic and impractical. Adequately researched and competent conclusions are then missing.

The Value System of Finnis's Natural Law Theory

On page 276 of Chapter Five, it was asserted that had the Natural Law model based on Finnis's theory of Natural Law and Natural Rights been employed, in order to critique and then advise on policy making, the Burdekin Report would have been more succinct and realistic in its formation and outcome. It would have emphasized all the areas of deficiency, and the requirements of a value system immediately recognizable to all members of the community, the common good, and practical reasonableness. Such an approach would have

justified the recommendations made by Burdekin, by placing them on the more solid base of a philosophical foundation.

Chapter Five, page 256ff. examined the Burdekin Report against the value system promoted by the Natural Law model, namely the components of basic human goods, knowledge, play, aesthetic experience, friendship, and practical reasonableness.

-Life (page 261) is stated by Finnis to correspond to the drive for self preservation (1980:86). It is a value having a wide scope, including every aspect of vitality which puts a human being into good shape for self-determination (1980:86). The Burdekin Report produced anecdotal evidence demonstrating that the mentally ill were not always privy to the common good, and that their rights were being neglected. The following examples offered by Burdekin substantiate these claims: inadequate housing (pp.337-398), marginalization (page 445), discrimination (page 446), lack of financial support and ensuing poverty (page 325). The majority of the chronically mentally ill exist on disability pensions and benefits, which barely cover the cost of accommodation and food, unless a client lives with an understanding family. The remainder of money left over after meeting these essential costs is insufficient to meet the expenses of public transport, clothing, toiletries and dental care (Burdekin 1993:325).

Had the Natural Law theory described in Chapter Two of the thesis been utilized, recommendations could have been made leading to policies which would have reflected the common good, by emphasizing the responsibilities each member of the community is required to undertake in caring for one another, so as to enable all to reach their potential as far as is humanly possible. Standing on a firm basis of social justice, such policies would give the mentally ill the opportunity to enjoy the basic human goods and to flourish as persons.

-Knowledge. Natural Law as described by Finnis, states knowledge is both a good in itself, and is also a means of satisfying one's curiosity. It makes intelligible one's activity and commitment to that activity (1980:62). Again, as stated in the thesis, (pp. 261-2), Burdekin described numerous instances of lack of concern for the client by the community, due he believed to ignorance and lack of understanding of mental illness. There was shown to be a serious lack of knowledge of mental illness not only on the part of the community itself, but also on the part of many of the health professionals, due to lack of suitable professional education, and inadequate post-graduate mental health education.

On pp. 257-259 of the thesis, observations were made which exemplified the affront to the good of knowledge, by the apparent indifference of nursing education to the needs of the mentally ill to be supported by competent, knowledgeable, psychiatric nurses. Acceptance of the Natural Law model would have led to the introduction of educational policies which reflected a value system advocating education of all members of the community at home, within the schools and of the media, law enforcement officers, bureaucracy, health professionals and carers. The contents of a curriculum based on social justice principles, and reflecting the common good, would have assisted the internalizing of knowledge and supported the human rights of the mentally ill.

The Burdekin Report illustrated on many levels how the basic human goods, including those of play, aesthetic experience, friendship and practical reasonableness, were denied to the mentally ill.

-Play. Examples were given throughout the Report of the long, dreary days experienced by the mentally ill living in the community. (Burdekin, 1993:325). Countless clients complained of the unstructured, useless days which stretched endlessly before them (Burdekin, 1993:315-318). These clients exist in the community, often without family, ignored by society at large, with only a perfunctory visit from a social worker or health team member. The implementation of 'play' would have contributed to their human well being (Finnis, 1908:87). Play provides entertainment for its own sake, and has a value of its own. To provide a policy making play possible, however, would have required a restructuring of the disability pension, and meaningful input by community and health professionals to insure inclusion of the mentally ill in societal activities. No such policy was recommended by Burdekin.

-Aesthetic experience. On page 260 of the thesis, it was stated while many forms of play include an element of beauty such as dancing, beauty is not synonymous with play. For many psychiatrically ill clients, painting is both therapeutic and enjoyable (Burdekin, 1993:323-324). Again, in the joylessness of their community lives, there was little indication throughout the Report that this good was available to them in the public health system. Had provision been made in the policy making for this value to be included, not only would the experience have provided enjoyment, but also significant therapy. It might also have offered an opportunity for the clients to enter the workforce if their artistic efforts were deemed to be artistically and commercially viable. Again, under the current disability arrangements, their pension will not allow even for the purchase of materials.

-Friendship. This value was discussed in Chapter Two (pp.66-67), and has been returned to in several parts of this thesis. The loneliness of the acutely mentally ill, the terror of not knowing where they are, and the inability to communicate those feelings, are described by clients as truly terrifying. The thesis states (page 261ff), that rejection by an indifferent community, only adds to their low self-esteem and poor quality of life. Burdekin emphasizes the isolation, also, of the family members who have a mentally ill relative. (1993:468). The loneliness of the elderly, perhaps suffering from Alzheimer's Disease, and the isolation of families from the community, because of the presence of an aged relative suffering from Dementia, are all examples of people in society desperately in need of friendship (Burdekin, 1993:515). When the common good embraces all members of the community as it does in the application of Natural Law, then provision is made for inclusion of the mentally ill and their families in whatever activities exist in that community.

-Practical Reasonableness. Finnis's theory of Natural Law states that this complex value involves freedom, integrity and authenticity (1980:88). It is a basic aspect of human well-being and concerns one's participation in all the other basic aspects of human well-being (Finnis, 1980:102-103). The requirements of practical reasonableness are requirements of reason, goodness and human nature. (Finnis, 1980:103). Among the reasons why things should or should not be done, are stated on page 261 of the thesis as: providing a coherent plan of life; a valuation of all the basic values; an equal valuation of all persons; detachment and commitment; efficiency in pursuing the definite goals we have adopted for ourselves, and respect for every basic value in every act (Finnis, 1980:102-125).

These requirements were all discussed in Chapter Two and replicated in Chapter Five in conjunction with their relevance to the Burdekin Report. A recommendation by Burdekin for the provision of policies reflecting a Natural Law theory such as has been described throughout the thesis would have demonstrated a valuation of all persons, so that respect would have been given to the values, and practical reasonableness would not have been found wanting.

One example is given in Chapter Five (pp.235-236) of a Mental Health Care service in Australia which uses a Natural Law theory. It demonstrates the practicality of Natural Law theory and practice as implemented in current mental health care offered by the St. John of God Health Services, Australia. This Order, utilizing the Catholic Church's social teaching

explained in Encyclicals written throughout the past one hundred and fifty years, clearly shows the practicality of Natural Law in serving the vulnerable and marginalized mentally ill, maintaining a strong belief in the common good, and bearing witness to the importance of social justice. Members of the Order are also affirming by their actions their belief in human rights for all members of the community.

Using a sociological structure, Burdekin had worked his way through the human rights and need for social justice in relation to the mentally ill among the homeless, women, children and adolescents, people with dual and multiple disabilities, people living in rural and isolated areas, Aboriginal and Torres Strait Islander People, people from non-English speaking backgrounds, forensic patients and prisoners, in that order (1993:268-269). The result of using such a sociological structure, however, was to introduce a weakness in the instrument of the investigation. While the Report was top heavy with the burden of anecdotal evidence, the account was perforce subjective and unstructured. The Report's findings, therefore, were weakened by being based on nothing else but subjective opinion.

A sociological model is, after all, merely a model of ideas. Had Burdekin employed a model using Finnis's Natural Law and Natural Rights theory, this would have given a sound ethical foundation to his observations. Finnis himself has indicated that Natural Law has the added advantage when used in conjunction with social science, it strengthens the latter and gives structure to its use, not leaving social science in a nebulous world of concepts and ideas (1980:P18).

Conclusion

In Chapter Five (page 265), it has been emphasized that a government cannot legislate for implementation or otherwise of concepts, for example, concepts of compassion, bias or stigma, but it can put into place a legal and just framework which will enable Finnis's Natural Law value system to be implemented and used throughout a community. Such a framework enables policies to be developed in which the value system is instantly recognizable by all, and enables the common good to flourish for the benefit of all members of society, including the marginalized and deprived groups, such as the mentally ill. Finnis believes that for such a system to flourish, it requires a sympathetic milieu, in which obligations each for the other are recognized and undertaken, and where justice is tempered with compassion. In the environment of the current policies praising economic

rationalism, fiscal and political globalization and relativism, as described throughout this thesis, it is difficult to see Natural Law being the preferred policy option of any Nation State.

FOOTNOTES: CHAPTER FIVE.

1. The word 'encyclical' is of Greek origin, meaning a letter that goes around: an encyclical letter (Charles, 1998:12). In the early days of the Church, bishops frequently referred to their letters which they gave to Christians who were traveling abroad, stating that they were 'in communion' (they received communion) with their local church, and were, therefore, recommended to other local churches. Since the sixteenth century, the title has consistently been used to refer to letters, written by the Pontiff himself, and for which he takes personal responsibility in the name of the *magisterium* or authority of the Church. They are concerned with doctrinal or moral matters, recommendations, exhortations and warnings (Freemantle, A. 1963: 21ff).

2. How closely the Order follows the pastoral exhortations of the various Pontiffs, and provides social justice, may be observed in the Mission Statement which acts as a guide to the work the Brothers aspire to attempt. A Mission Statement does not and cannot, define the works the Brothers will undertake.

Our mission (is one of) hospitality, and our core values (are) excellence, compassion, justice and respect...Excellence to find within ourselves and others the best we have to offer; compassion to acknowledge the pain of others' journeys; justice that all receive what is rightfully theirs; and respect to ensure that each person's unique value is acknowledged...If we are to honour our mission of hospitality then our works matter. What is difficult is the practices we develop in order to do a good job....Best practices (are essential) ...Our critical task is to be faithful to the person who comes to us in trust and who expects the best of care...(Our) mission of hospitality offers healing and dignity to those marginalized by our society. Those who come seeking assistance...have become vulnerable through their illnesses. They struggle with the questions of meaning as well as their disorder. Not only do we offer them the best of psychiatric care, but also a sanctuary where they can contemplate and make sense of their life journeys...(Our) Mission, is more than a program. It is about the continual creation of a climate...that enables the values to encompass all aspects of service...It respects the individual and challenges staff and the services ..provide(d) to continuous improvement (Annual Report, 2001).

In the current year (2004), the Order is the third largest private hospital operator in Australia. It has nine hospitals, two major pathology networks and two medical imaging practices. It treats more than 100,000 patients annually in Victoria, NSW, and Western Australia.

The Sisters of St. John of God also fund and support a wide range of social welfare, community and pastoral care programs in rural and urban communities, either directly or through the St. John of God Foundation. Recently (in late 2003), the Order appointed its first Chief Nursing Officer, in order to provide leadership and support for its sizable nursing workforce of between two and three thousand nurses. Royal College of Nursing, Australia, National Nursing Networks Newsletter (2003, Vol.6:41-42).

3. Robertson considers the evolution of the concept of human rights and mentions the role of rights which formed part of Hammurabi's Code some four thousand years before the coming of Christ (1999:1). Robertson continues on to explain that in the ancient world, the closest lawyers of the Roman Empire era came to conceiving of 'universal, special rights,' was in the Roman cataloguing of those rules which they discovered to be present in all civilized societies, and to which they gave the inclusive title *jus gentium* (1999:1). Finnis agrees with Robertson in tracing human rights' antecedents to the Roman culture in the word *jus* in the context of justice (1980:206). Aquinas, writing many centuries later, but well acquainted with Roman law, asserts the primary meaning of *jus* is 'the just thing itself,' clarifying 'the thing' as:

"..acts, objects and states of affairs considered as subject matters of relationship of justice." (In Finnis, 1980:206)

In this sense, Finnis interprets Aquinas as meaning ‘what is fair:’ an interpretation with which, surely, Rawls would agree. Aquinas proceeds to list secondary and derivative meanings of *jus* as:

“Relationships of justice...the act by which one knows or determines what is just, the principles and rules of which are the law...the place in which what is awarded (the modern legal system and the court (and) the award of the judge...whose role it is to do justice.” (Summa Theologica II-III 9,57 a,1c, and 1 and 2.)

From the time of Aquinas’s interpretation of *jus* as *fairness* in our dealings with one another until the present day, rights underwent a subtle change. Suarez, writing in c1610, was to observe that *jus* was:

“A kind of moral power which every man has, either over his own property or in respect to what is due to him.” (1610, I ii:5)

Grotius, 1625, agrees with Suarez, and describes *jus* as something one has “...a power or liberty” (1625: I, iii). Finnis has analyzed various philosophical explanations of justice administered over the centuries, and concluded that the changes wrought by Suarez and Grotius transformed Aquinas’s primary meaning of *jus* by relating it exclusively to the beneficiary of the just relationship, above all:

“...to his/her doings and havings.” (Finnis 1980:207)

4. Thomas Paine is believed to be the first writer to:

“Fuse outraged polemic and constitutional philosophy to produce a distinctive literature of human rights.” (Robertson 1999:8)

Paine fought beside Washington in the American War of Independence, helped Jefferson draft the Declaration of Independence, and on returning to London, wrote The Rights of Man.

5. Bentham asserted that no-one was born free. All human beings entered life as helpless infants and were subject to parental authority for many years (Robertson 1999:11). In adult life, there were unequal situations: master and apprentice, lord and servant. Bentham believed that if natural rights were seen as coming from God, their content was unknowable; if they were inborn, they were unprovable and unpredictable (Robertson 1999:11). It was as a result of Bentham’s strong influence and the prevailing philosophical view of Classical Utilitarianism, that natural rights fell out of favour throughout the nineteenth century and most of the twentieth century.

6. In 1935, the League of Nations through the Permanent Court of International Justice, condemned Albania’s decision to close down private schools serving its Greek minority. Other judgments supported German settlers in Poland, and Polish nationals in Danzig; but the League proved itself ineffectual in preventing or stopping the Italian invasion of Abyssinia in 1935. This was mostly due to the belief in the sovereignty of the nation state (Robertson, 1999:196).

7. The Prime Minister’s words over the Tampa incident in December, 2000, however, suggest that there lingers in some politicians’ minds, the belief that the authority and power of the sovereign State is still considered supreme by them, and that the Classical Utilitarian theory of ‘the greatest benefit for the greatest good’ is even now being upheld. During the Tampa refugee incident off Christmas Island in December 2000, when supposedly illegal refugees fleeing inhumanitarian Middle East horrors were refused entry into Australia by the Federal Government, the Prime Minister declared that: “We will decide who comes to this country.” (Rt Hon J.W Howard, December, 2000) The fears on the part of the Australian community, fostered by propaganda and ignorance, that Australia was about to be overrun by hordes of Asian terrorists

posing as refugees, appeared to lead to the easy political manipulation of the Australian community on the eve of a General Election (Evidence at the Senate Inquiry, April-May, 2001).

8. The human rights talk which produces a state of incommensurability between, for example, the woman who believes she has a right to an abortion, because she has control of her body (her choice), and the pro-life opposition who, equally firmly, hold the foetus's right to life to be irrefutable, is seen by Glendon as the ultimate conclusion to Enlightenment belief in individualism and rationalism (1991:66). In a situation where human rights talk is seen as all powerful, and obligations are ignored, incommensurability reigns and consensus is impossible. The mother has made her choice much earlier, by placing herself in a situation where pregnancy can occur, and is disregarding the fact that the foetus, once its existence is established, is dependant on her to recognize her obligations on his/her behalf to cherish the life she has been responsible for initiating.

9. The infant and young child are not sufficiently mature to accept personal responsibility in any circumstance. The parents accept obligations on behalf of the child, for his/her well being, and to train him/her by word and precept in a way of practical reasonableness. In that small but vital unit of a group, namely, the family, the child learns to relate to others, and to recognize the significance of the good.

10. The conference had been called in the wake of the collapse of the Soviet empire, and the end of the Cold War between Eastern and Western blocs. The political situation made it possible and indeed, essential to revisit the work on human rights that had been carried out by the United Nations and its agencies since 1945 (Drinan, 2001:x). Drinan has pointed out that while the *Vienna Declaration* should not be over emphasized, since it is an *agreement*, and self-reinforcing, nevertheless, there was consensus among the participants, and after eight days of careful deliberation, all reaffirmed every human right agreed to by the United Nations and its agencies (Drinan, 2001:xi).

11. It was possible for health authorities to formulate the concept of Primary Mental Health Care utilizing, for example, the Wellness and Illness Model devised in 1959 by Halbert L. Dunn, a Canadian sociologist. He proposed a model in which health was seen as a continuum ranging from a very high state of wellness, down through the scale of average good health, eventually reaching extremely poor health, and ultimately, death (in Folta and Deck, 1966: *A Sociological Framework of Patient Care*: Essay No. 20). As shown in Figure 5.1, (page 301 A) in Dunn's model the health axis is bisected at right angles by the environmental axis: by application of this model to mental health and wellness, the significance of environment upon mental well-being becomes obvious. The globalization of mental health care in every dimension could thus be promoted using the umbrella of the *Declaration of Human Rights* and its off-shoot, the World Health Organisation.

12. This situation was not confined to Australia; Andrew Scull was to comment that in the USA:

Many ...become lost in the interstices of social life, and turn into drifting inhabitants of those traditional resorts for the down and out, Salvation Army hostels, settlement houses and so on...For thousands of the old already suffering from mental confusion...the new policy has meant premature death...Others...have been left to rot in broken-down welfare hostels. For thousands of younger psychotics discharged into the streets, this has meant a nightmare existence in blighted city centres, crowded with prostitutes, ex-felons, addicts, alcoholics and other human rejects...repressively tolerated by their society...They eke out a precarious existence, supported by welfare cheques they may not know how to cash...locked into or out of dilapidated 'community-based' boarding houses. They are...the prey of street criminals...and a source of alarm to those 'normal' residents of the neighbourhood too poverty-stricken to leave. 'Community care' ...remains an inflated catch phrase, which conceals morbidity in the patients and distress in the relatives. (1993:390-391)

301A

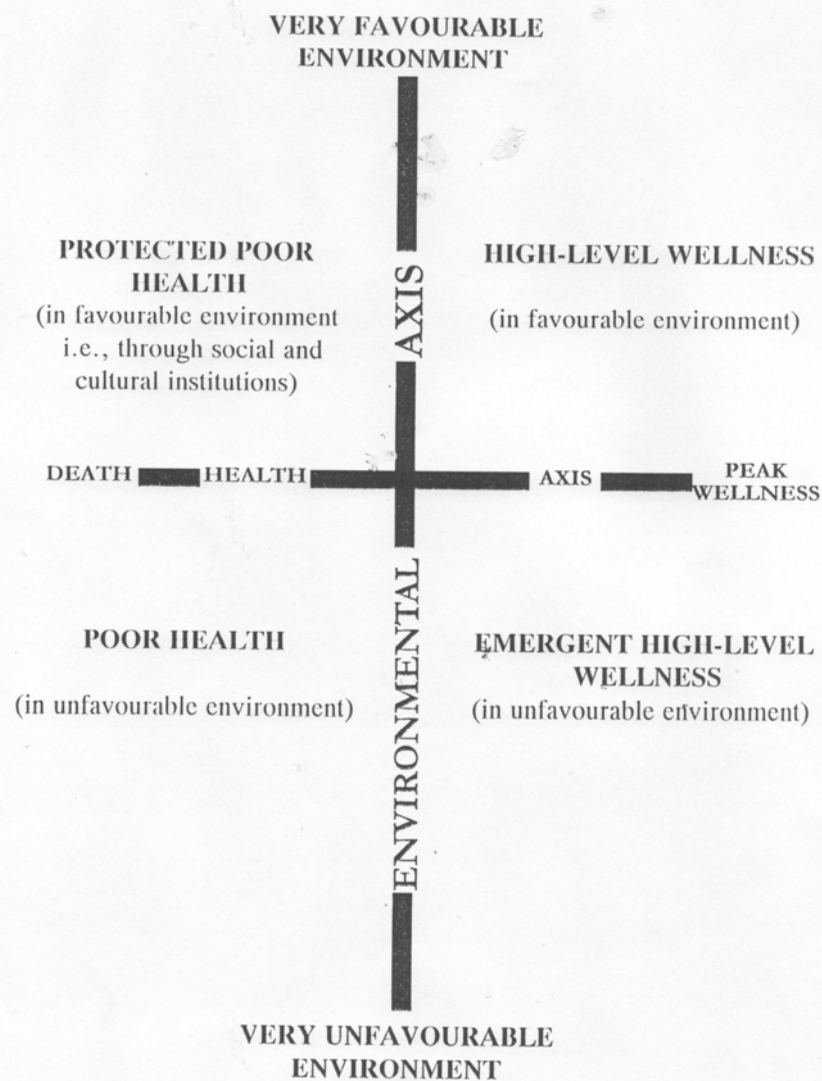


Figure 5.1 High Level Wellness for Man & Society
Halbert L Dunn

13. By this date, mental health in Australia had become a strange mixture of health care delivery. It had, as has been described, inherited custodial psychiatric care in a form of social control which had been forged by sequestration in an asylum milieu. It had entered a second phase by treating those suffering from minor psychoses, such as obsessive-compulsive disorders, either as voluntary patients or else in the community setting. After the advent of psychotherapeutic drug therapy in the 1950s and 1960s, the third phase of treatment of both major and minor psychiatric illnesses in the community setting had resulted. All three phases presented concurrently within a bureaucratic structure which had been designed to support sequestration, but with the majority of patients/clients now situated geographically within the community, and often without specific infrastructure either in human or fiscal form to support them.

14. In the years leading up to 1991, AHMAC formed a Mental Health Consumer Outcomes Taskforce under the Chairmanship of Professor Beverley Raphael, then Professor of Psychology, Queensland University. The result was the *Mental Health Statement of Human Rights and Responsibilities*, (MHSRR), which was endorsed by AHMAC in 1991. In 1992, AHMAC adopted the *National Mental Health Plan* and the *National Mental Health Policy*, which together with the *Statement of Rights and Responsibilities* would form the *National Health Strategy* (Foreword, 1991).

15. Evidence collected during this research suggested that many of the homeless were suffering from

“... undiagnosed and untreated mental health problems.” (*Burdekin Report*, 1993)

On conducting further research, it was clearly established by Burdekin that a failure to provide adequate care and protection for the mentally ill affected individuals of all ages. In many cases, he asserted that human rights were being ignored, eroded or seriously violated (*Burdekin Report*, 1993:3).

The research further revealed:

- Widespread discrimination against people affected with mental illness;
- Widespread misconceptions about the number of people with a mental illness who are dangerous;
- A widespread belief that few people affected by mental illness ever recover (1993:5);
- Widespread ignorance about the nature and prevalence of mental illness in the community.

16. Telephone conversation with Dr Raphael, 10 November, 2000.

17. Telephone conversation with Dr. Raphael, 10 November, 2000.

18. In Chapter One of the thesis it was stated, that while there was a dearth of epidemiological surveys, and an absence of a comprehensive data base, Burdekin believed that approximately 250,000 Australians, or 1.5% of the population, suffered from major psychoses. It was estimated that one in five adults either had, or would develop, some form of mental disorder, while approximately 1% of the population, (170,000 Australians), suffered from Schizophrenia (1993 :14). Yet 20% of people who experienced an episode of Schizophrenia, recovered without the need of hospital intervention. Approximately 40% suffered recurrent episodes over several years, and approximately 35% would be affected throughout their lives. In any one year, it was believed that one in five people affected by Schizophrenia would require hospitalization (1993:15). Burdekin believed that 100,000-140,000 Australians suffered from moderate to severe dementia, while approximately 50% of elderly people had at least one symptom of depression (1993 :15). Evidence showed that approximately 15% of adolescents suffered some sort of mental health problem, while 1% had serious

psychiatric disorder (1993 :14). The elderly also demonstrated an increase in mental disorder with advancing age, with a rapid rise shown to occur after the age of 65 years (1993 :14).

19. During the 1980s, there had been a series of scandals involving abuses of mentally ill clients within psychiatric facilities in three different Australian States. The NSW *Royal Commission into Deep Sleep Therapy at Chelmsford Hospital (1991)*, where twenty six patients had died, *The Commission of Inquiry into Ward 10, Townsville General Hospital, Queensland, (1991)*, and a third investigation into Lakeside Hospital at Ballarat, Victoria; had all provided what were described by Commissioner Carter conducting the Townsville Inquiry as:

“Frightening reminders of the results of bureaucratic nonchalance and indifference.” (Carter, 1991:vo1.v)

20. Strategies were developed to ensure the involvement of the greatest number of Australians directly affected by mental illness and to protect their confidentiality. Particular care was given to protect the confidentiality of all those participating in the investigation.

21. Australia legitimizes voluntary, involuntary and informal control by means of both Federal and State/Territory legislation, such as the individual Mental Health Acts, and exercises social control by defining parameters of mental health services and related factors, such as the Disability Services Act, National Health Act, 1953 as amended, Health Insurance Act, Social Security Act and Disabilities Discrimination Act (Burdekin 1993:50-60).

This, however, it was stated did not appear be the case for Tasmania which was reported as providing within the Mental Health Act:

“...a scope inconsistent with modern developments in relation to the mentally ill...The current legislation fails rather dismally by any test.” (Sale in Burdekin, 1993:109)

Further, Burdekin recorded that there was no reference in the Tasmanian Mental Health Act to Electro Convulsive Therapy (ECT,) nor to psychosurgery (Burdekin, 1993:109). These procedures were discussed in Chapter Three of the thesis.

22. Burdekin believed that reliable statistical evidence would be difficult to obtain, given the paucity of information gathered by the Federal Department of Health from the States/Territories annually. Nor would it be useful in obtaining the sort of answers concerning human rights and social justice, that Burdekin anticipated.

23. Public hearings were conducted over fifteen months commencing in Melbourne on 8 April, 1991, and were convened in a representative selection of cities and regional areas across Australia. Arrangements were also made for those wishing to give evidence to travel from smaller centres in every State and Territory. Private hearings were convened when requested, and written confidential submissions were accepted. Burdekin reported his disquiet at the number of witnesses who requested anonymity, and believed it related directly to the stigma and discrimination which still surrounded mental illness.

Evidence was collected from 456 witnesses during the formal hearings, as well as 60 submissions from those wishing to make confidential submissions. Informal consultations were held with Aboriginal groups in the Northern Territory, as well as with Aboriginal representatives and mental health workers in every State.

Advertisements had been placed in national state and territory newspapers inviting interested persons and organisations to make written submissions. As a result, more than 826 such submissions were received. Evidence received from mental health professionals, church groups, professional associations, government

and non-government groups, carers and consumers was tabulated, those who had given evidence 'in camera,' only being identified as 'consumer,' 'carer' or 'mental health professional' (Burdekin, 1993 :9).

24. The very things that a value system which embraces the common good and endorses in a coherent plan of life in order to enable the individual to reach his/her potential: recreational activities, counselling, therapy, friendship, were described by Burdekin as being beyond the financial means of most clients. Services by clinical psychologists, and private social workers were not rebated under the Medicare system (Burdekin, 1993:325). Inability, due to illness, to understand medication prescriptions and Government forms, led to clients not applying for legitimate benefits, for example, Health Cards. Again, the area had not been well researched, but Burdekin pointed to the direction in which investigation should take place. Anecdotal evidence demonstrated the need to investigate what appeared to be a serious situation, with a spiralling downwards of the destitute mentally ill into homelessness (Quinn in Burdekin, 1993:328).

25. Evidence concerning power and authority automatically included evidence concerning the role of the general practitioners in diagnosing mental illness. Evidence frequently demonstrated their lack of knowledge and education concerning psychiatry. Similar repetitious evidence occurred throughout the Report, in relation to each category of health professional and those having to communicate with the mentally ill.

26. Undergraduate nursing curricula aim to produce a generalist with beginning competencies in all areas, including first level psychiatric nursing care. Misgivings were voiced, however, that finely honed psychiatric skills learned from the beginning at the 'coal face' might be lost to generalist, but predominantly medical/surgical nursing in the undergraduate program:

"In NSW...it was the intention that a comprehensive basic curriculum would be developed...many mental nurse academics...are sure that has not happened." (Curry in Burdekin, 1993:194)

27. 'Medical model' refers to the traditional approach to the diagnosis and treatment of illness as practised by physicians in the Western world since the time of Koch and Pasteur. The physician focuses on the defect or dysfunction within the patient, using a problem-solving approach. The medical history and the physical examination together with diagnostic tests provide the basis for the identification and treatment of a specific illness. A medical model, therefore, focuses on the physical and biological aspects of specific diseases and conditions. A nursing model differs from the medical model concept in that the patient is perceived as a social person relating to the environment: nursing care is formulated on the basis of a nursing assessment that assumes multiple causes for the problems experienced by the patient (Mosby, 1990:735).

28. In Chapter Three of the thesis, the monotony and aimless dreariness of institutional life was emphasized, together with the loneliness of isolation experienced by inmates who were often far away from families and friends. The lack of beauty in their surroundings, the roughness of many of the attendants and the lack of stimulation among the other similarly mentally ill inmates, made life stretch out into one long dreary existence. Little thought seems to have been given by Authorities as to providing an aesthetically improved environment in community life when arranging for de-institutionalization. With barely enough money to provide for rent and food, nothing was left over for recreation. Whether the venue was living with a family or as a member of a group house, the inspection of the premises seems to have been perfunctory. The basic requirements such as crockery, cutlery and a bed were often the only requirements. Books, pictures and personal belongings do not seem to have been encouraged. These articles would not have been provided

automatically by the mentally ill coming from an institutional environment where personal belongings did not exist.

29. Megan-Jane Johnstone has illustrated her article on Stigma, Social Justice and the rights of the mentally ill: Challenging the Status Quo (2001) with the following letter from a sufferer of severe mental illness:

Dear Anybody,

If anyone is out there please hear me. I fear I am in the grip of a terrible nightmare. First of all, I have to tell you I am very sick. I feel like an animal on a leash but no one tells me what to say...I am sick, so very, very sick. ('Julia.' In Glass, 1989, cited by Johnstone 2001)

30. This was born out by the experience of the writer who witnessed a highly intelligent Honours undergraduate student being treated in one State Hospital Accident and Emergency Department after attempting to take his own life. The conversation from the Casualty doctor was as follows:

"Oh God! Not another one looking for attention. That makes twenty this week. I hope you realise how much of my time you are wasting, not to speak of the taxpayers' money." When his attitude was questioned, the doctor admitted he had no knowledge of psychiatry or appropriate treatment for severe depression. He could only call on his experience with 'normal' patients. The need of, perhaps, a Psychiatric Registrar being called, he believed to be unnecessary, even when it was suggested that, had the patient broken a leg, an Orthopaedic Registrar would most likely have been summoned. The connection was totally lost on him.

31. In his report, Dr. Paterson declared:

At no stage did Burdekin actually deal with costs and outlays, except to denounce efficiency measures, and to endlessly repeat that more money was needed....In 1994, I observed that governments have been in a quandary as to how to respond to Brian Burdekin's report. His towering moral fervour totters on a scrappy anecdotal foundation in 'fact'...Reform takes not just moral fervour, but organisation, on which Mr Burdekin had nothing to say....He never produced any (substantial) analytical measures. He never identified the systemic factors that were selling short the mentally ill in Victoria. Brian Burdekin on mental health is no more than a convenient illustration of a belief system that virtually eliminates the possibility of coherent public discussion in the health and welfare fields. (*Report to Parliament, Victoria by Health Department of Victoria, 1995*)

32. In the first five years of its existence, (1993-1998), the NMHSRR aimed to address:

- Consumer rights and responsibilities;
- Promotion of health;
- Prevention of mental health problems and mental disorders;
- Access;
- Assessment, diagnosis, treatment and rehabilitation;
- Admission to a mental health facility or community program;
- Standards;
- Mental health legislation;
- Mental health and legal matters;
- Rights and responsibilities of carers and advocates;
- Service provider rights and responsibilities (NMHSRR, 1991:1-21).

33. The mental health legislation in force at the time of the application in each jurisdiction was: *Mental Health Act, 1990*, as amended (NSW), *Mental Health Act, 1996* (WA), *Mental Health Act, 1986*, as amended, (Victoria), *Mental Health Act, 1996*, (Tasmania), *Mental Health Act, 1993* and *Guardianship and Administration Act, 1993*, (SA), *Mental Health and Related Services Act, 1998*, (NT), and *Mental Health (Treatment and Care Act, 1994*, as amended (ACT).

34. The instrument was able to provide concrete guidance for responsive reform; some jurisdictions used it to develop Drafting Instructions for new legislation. By involving stakeholders in the process, the importance and relevance of the task was highlighted. It was reported that not only was some ownership of the results generated, but local expertise and knowledge were able to be used in dealing with detailed and often complex legislation (National Mental Health Strategy, 2000:3). The Instrument has particular value in a Federal system, where it can accommodate States' and Territories' concerns with maintaining their sovereignty through involving them in self-assessment. At the same time, the universal application of international human rights norms can be upheld, as well as their consistency in interpretation through the National Assessment Panel (National Mental Health Report, -NMHR- 2000:21). AHMAC believed that the use of multi-disciplinary panels involving stakeholders was critical to balance the assessment process.

35. By comprehensively documenting and stimulating best practice, as well as highlighting areas of deficiency, this has led ultimately to increasing compliance with the UN Principles beyond that reported by Burdekin in 1993 (NMHR 2000:21). NMHSRR reflects the *United Nations Declaration of Human Rights*, together with the *United Nations Resolution on the Protection of the Rights of People with Mental Illness* (UN Resolution No. 98B on the Improvement of Mental Health Care, Adopted 17 December, 1991). The contents of the document NMHSRR confirmed the prevalence of social injustice, stigma, alienation, isolation and discrimination. The concept of mental health was explained as:

A positive concept which embraces both individual inner experience and interpersonal group experience. It is the capacity of the individual and the group to interact effectively within the environment. To the individual...(it) means happiness, competence, a sense of power over one's life, positive feelings of self-esteem and capacities to love, work and play...Improving the mental health (of community members)...is a major investment in all aspects of community life, and is part of the function of health service providers. (NMHSRR, 1991:vii)

36. Inadequacies identified included:

- The need of greater recognition of community treatment;
- Specifying the various requirements to protect minors and forensic patients, as well as secure confidentiality;
- Defining a minimum period before involuntary admission cases are reviewed;
- Requiring review bodies to observe the rules of natural justice;
- Broadening the criteria for exercising inspection powers and dispensing with notice to the facility before inspection occurs;
- Their limited scope in that they did not cover facilities that bore the impact of de-institutionalization, such as residential facilities;
- Clarifying the status of electro-convulsive-therapy;
- Granting consumers the right to a second opinion when voluntary admission is refused, and acknowledging the rights of carers; and
- Emphasizing positive human rights, such as codifying national standards, rather than merely providing negative protection against abuse;

Additional areas identified include:

- Requiring tribunals to be bound by the rules of natural justice;
- Giving greater weight to the rights of forensic patients; and
- Clarifying the requirements relating to guardianship proceedings (National Mental Health Report 2000:4).

37. The National Mental Health Report published in 2002, recapitulates evidence contained in previous National Mental Health Reports. It continues to build on to and provide evidence of further development during the period of the second National Mental Health Plan, 1998-2003, which itself still maintains a focus

on human rights and social justice. The following examples show the direction in which mental health care is focused in Australia:

-The number of clinical staff providing ambulatory mental health care grew by 68% in parallel with increased spending. 2,300 more health professionals were employed in ambulatory mental health services in 1998 than in 1993. By 1999-2000, that number had reached 6,349 in the ambulatory service setting, and decreased by approximately 2000 members to 8,621 in the residential setting (National Mental Health Report, 2002:39).

38. Total numbers of beds were reduced by 42%, and there was a corresponding rise in the numbers of beds in psychiatric units attached to general hospitals (National Mental Health Report, 2002:27).

39. All States and Territories have transferred management of public mental health services to the mainstream health system (National Mental Health Report, 2002:3).

40. Consumers and carers have been included in all national planning groups established since the Strategy began. This has been slower in some States/ Territories than others, depending on for example, community desire to participate, and also consumer and carer perception as to what their involvement might be. At the service delivery, by 1998, 61% of organizations had established a formal mechanism for consumer participation in local service issues. This has continued, and has been confirmed as developing from what, in some cases, appeared to be a tokenistic acceptance of consumer participation, into a stable partnership in mental health reform (National Mental Health Report, 2002: 134-142).

41. Funds allocated to non-government organizations to provide support to people with psychiatric disability grew by 200%. The non-government sector increased its overall share of mental health funding from 2% to 5%. Simultaneously, there was a 65% increase in the number of beds in 24-staffed hour community residential units, designed to replace the former role of psychiatric institutions (National Mental Health Report, 2002:37-8).

42. Commitments made to reinvest savings from the downsizing of older style psychiatric institutions back into mental health programs were made in all States. 48% of the growth in community-based and general hospital services was funded by resources released through institutional downsizing (National Mental Health Report, 2002:16-22).

43. AHMAC Evaluation Steering Committee had reported in the early National Mental Health Reports that much has been achieved by the various State and Territory jurisdictions:

Mental health services are seen to be more responsive, more community oriented and better integrated with general health care....the National Mental Health Strategy has been instrumental in ...accelerating the change process ...has created the impetus for change and guided reforms that followed...funds made available have been critical in expanding mental health services into the community...(and) provided leverage to change human service systems operating outside the traditional mental health boundary. (National Mental Health Report, 2000:11)

The National Mental Health Strategy Projects included:

- National Survey of Mental Health and Wellbeing;
- National Minimum Data Set;
- National Standards for Mental Health Services;
- Mental Health Legislation Project;
- Enhanced Roles for General Practice in Mental Health Projects;
- Rural and Remote Projects;

- Crisis Intervention Projects;
- Aboriginal and Torres Strait Islander Projects;
- National Community Awareness and Development Project;
- Education and Training Needs of the Mental Health Workforce;
- Innovative Grants Program;
- Children and Young Peoples Mental Health Issues;
- Early Intervention Projects.

Not all of these were completed during the first five years of the Mental Health Plan. Some would be continuous and on-going, some could not be started until the period of the second Mental Health Plan.

Projects of particular importance are:

(a). Collaboration with the National Youth Suicide Prevention Strategy on initiatives to address the mental health of young people.

(b). Another project: *The Low Prevalence Disorders Study* is being undertaken through the University of Western Australia.

c) A Mental Health Classification and Service Costs (MHCASC) Project was launched in 1995, and is currently on-going, with the aim of determining whether a casemix classification can be developed for specialized health services, and which can be applied across acute inpatient, non-acute inpatient, and community settings. Within the general health setting, throughout Australia, Australian National Diagnosis Related Groups (DRGs) are used to classify patients treated in acute hospital settings. They cover all health conditions including mental health, but serious concerns have been raised with regard to their use in mental health. DRGs do not predict accurately the cost of treating people with mental illness.

It was a little perplexing, therefore, to learn that South Australia and the ACT had both decided categorically to employ AN-DRG methods of accountancy, when a national study: *the Mental Health Costs and Classification Systems (MHCACS)*, is still being trialed throughout the Commonwealth, and the Commonwealth Government itself, has acknowledged that the AN-DRG system is considered unsuitable for use in the mental illness sector. Western Australia has reported that, in trialling MHCACS:

“The results were mixed and not far in advance of the DRG system which is not satisfactory for mental health.” (*Summary of National Mental Health Strategy Projects, Canberra, 1997*).

For a full account of the National Mental Health Strategy Products, please see the National Mental Health Report, 2000)

44. In order to address the shortcomings, AHMAC had recommended the following areas for national action:

- Service standards, quality and outcomes;
- Extending the role of consumer and carers;
- Defining mental health need;
- Strengthening rehabilitation and personal recovery;
- Responding to people with special needs;
- Population approaches to prevention and promotion;
- The place of the mental health private sector in national reform;
- Strengthening the role of primary care;

- Rural populations;
- Developing planning and performance benchmarks;
- Funding tools to drive change;
- Technical support for service innovation;
- Information infrastructure for mental health services (National Mental Health Report, 2000:12).

45. The National Mental Health Report (2002) acknowledges these earlier shortcomings and is working on them.

46. That there was (and still is) confusion over the term 'social justice' is shown by the instance at one psychiatric unit attached to a general hospital, where as recently as 1993, an eight feet high cyclone fence was erected around the garden attached to the psychiatric department. The reason given by the nursing staff was that it promoted social justice for their clients, giving them a feeling of security! Soon after its erection, one client used the fence to take his own life. Ten years later, the fence remains in position, and the same justification is still given as to its need (Anon.1994 and 2002).

47. The Catholic Church has affirmed that the common good is incompatible with unlimited free-market, or laissez faire capitalism, which insists that the distribution of wealth must occur entirely according to the dictates of market forces (1996:24, para78). Further, the Catholic Church emphasizes that Adam Smith did not envisage markets operating in a value-free society, but assumed that individual consumer choices would be governed by moral considerations, not least the demands of justice (*The Common Good*, 1996: para77).

CHAPTER SIX: CONCLUSION

1. Introduction.

This thesis has been written with the aim of analyzing mental health care in Australia from a social justice and human rights perspective. This has been undertaken in order to demonstrate that social justice is an essential ingredient in the provision of the common good, and to determine whether or not the mentally ill are receiving the same justice and social justice as all other members of the community, by participating equally in the common good. To this end, a conceptual approach has been employed, and certain concepts have been emphasized, in order to demonstrate the path that mental health care was taking at the particular time under consideration. These concepts are re-capitulated in the summation of the thesis.

Concept 1. The Concept of the Common Good.

The common good which is referred to throughout the thesis, relates to a set of conditions which enable all members of a community, including the marginalized, to attain for themselves reasonable objectives, or to realize reasonably for themselves the value(s) for the sake of which they have collaborated with each other (Finnis, 1980:154-156). The common good is an essential component of Natural Law theory as described by Finnis (1980) and is considered in depth in especially Part B of Chapter Two.

Concept 2. The Concept of Social Justice.

Social justice is a manifestation of the common good, and is a consequence of the mingling of compassion for our fellow human beings with justice. In describing the relationship of the common good to social justice, Charles reminds us that:

(it is) the virtue which enables us to give to others that which is theirs by right, that to which they have a moral right and one that can be vindicated at law: the function of the law being to secure justice...General justice produces justice in society, social justice, as the State which has the care of the common good through humane legislation which enables the citizens...to develop their potential. (Charles, S.J. 1998:396)

Social Justice as interpreted by Enlightenment theorists and from the point of view of Natural Law, (Finnis's theory), is considered in detail in Chapter Two, and referred to in all subsequent chapters of the thesis, with particular emphasis on social justice for the mentally ill.

Concept 3. The concept of Mental Illness.

In Chapter One, it was shown that there is no clear concept of mental illness, and that this has resulted in unclear definitions being made by members of the medical and legal professions. The lack of clarity has also made itself manifest in the differing language used by the lay members of the community and health professionals. The ‘ordinary sensible people’ described by Justice Lawton will speak of ‘funny farms’ and ‘trick cyclists’, whereas professional language talks of ‘psychiatric hospitals’ and ‘psychiatrists’. It was argued that such unprofessional language can lead to a denigration of the mentally ill person and his/her condition in the eyes of society, and affect their acceptance by the community.

-The Legal Concept of Mental Illness.

In Chapter One, consideration was given to the fact that from the legal point of view, a legal model must surely safeguard human rights where the liberty of the individual is involved, by containing a clear definition of mental illness, because, implicit in law is a precision of definition, an exactness of what is meant by a statement (O’Sullivan, 1981). Likewise, working definitions of involuntary (confinement to the asylum by direction of the law) and voluntary status (confinement of the patient’s own volition), as well as legal guidelines for admission and discharge processes would all appear to need legal exactness in their definition because again, in many cases, especially with involuntary committal which does not depend on the wishes of the individual, the liberty of the individual is involved.

With regard to the legal definition of mental illness, O’Sullivan has written that:

“Judges who must provide definitions where statutes fail, have not been too anxious to attempt to clarify ‘mental illness.’” (O’Sullivan, 1981:1)

In the case *W. versus L.*, L.J. Lawton decided:

The words (mental illness) are ordinary words of the English language. They have no particular legal significance. How should the court construe them? The answer in my judgment is to be found in the advice which Lord Reid recently gave in *Cozens v. Brutus* (1973) AC 854, 861, namely, that ordinary words of the English language should be construed in the way that ordinary sensible people would construe them. (O’Sullivan, 1981:1)

In Chapter One, it was shown that each State defines mental illness in a different manner to the other States. With regard to justice for the mentally ill, each Australian State and Territory during the 1950s attempted to address the problem legally, in a way that would

not violate the individual's human rights, while protecting the mentally ill and guaranteeing the safety of the community. Many of the definitions, however, as has been shown, were vague. If the definitions were vague, it is difficult to see how the legal status of the mentally ill patient might be accurately defined, and the human rights of the mentally ill adequately safeguarded during that period. There was, and still is, a lack of standardization existing between all States and Territories.

-The Medical Concept of Mental Illness.

Within the thesis, it has been shown that the vagueness of legal definitions of mental illness has thrown great responsibility on to medical diagnosis. This implies that there must be firstly, an organic cause, secondly, certain assumptions about diagnostic measures and thirdly, a certain approach to treatment strategy (Scadding, 1967:877). How are mental illnesses classified? They are interpreted by psychiatrists who identify clusters of symptoms and signs which relate to disturbances in mental functioning. Not only lawyers have difficulty in defining mental illness. The work of Scadding has been shown in Chapter One to be important in this regard, in that he demonstrates that the problems in defining mental illness relate not to the fact that mental illnesses of a classical type exist as disease or syndromal entities, but relate to uncertain aetiological factors (such as biochemical, genetic) (Scadding, in The Lancet 1967:877). Moore has commented that our language is rich in providing labelling vocabulary for various mental powers. For example:

"We have capacities of perception, of memory, of imagination or learning; the basic capacities of reasoning and thinking; the capacities to feel emotion and the capacities of will to have one's emotions and desires issue in one's action." (1980:60)

It is surely the impairment of these mental functions that we have in mind when speaking of someone as being mentally ill. It is suggested that these symptoms are behavioural symptoms and that, consequently, the criteria which are applied to the mental health definition should be linked to the behaviour of the individual who is considered to be mentally ill. The often unintelligible behaviour of the mentally ill, is compared in some detail in Chapter One with that of the person who is deemed to be mentally healthy.

The inability to adequately define mental illness from the legal and medical perspectives has persisted throughout the ages. In Chapters One and Five, it was demonstrated that all State and Territory definitions of mental illness in relevant Lunacy Acts of the nineteenth century, and later Mental Health Acts of the twentieth century, up to the time of the Burdekin Report (1993) remained vague, and left the mentally ill vulnerable and

dangerously exposed to social injustice. The mentally ill could be compromised because of the inability of lawyers and psychiatrists to agree on a satisfactory definition of mental illness. The National Mental Health Report (2004) acknowledges that the situation is still not settled, because all the instrumentalities have yet to be finalized. Until this situation is brought to a satisfactory conclusion, and agreed upon by all States and Commonwealth Governments, the mentally ill will still be left in a compromised position between the penal and medical systems.

2. The Scope of the Thesis.

The scope of the thesis covers the years 1800-2004. The beginning of the nineteenth century was chosen deliberately as the starting date for the discourse, firstly, because census figures were collected for the first time in 1801 in England, so that epidemiological evidence became available. Secondly, the time frame was chosen because the end of the eighteenth century and beginning of the nineteenth century marked what many sociologists and historians believe to be the transformation from the Classical Age to the beginning of the Modern Age (Scull, 1993:56-7, Shorter, 1997:1-3, Foucault, 1972:40), a time which is known as the Age of Enlightenment. At this time, many historians believe that a mutation in thought took place, so that thought itself entered into a new dimension. Foucault argued that because of this mutation, the rupture outlined the historical limits of thought, so that if we try to trace psychiatry and mental illness back beyond the nineteenth century, we will lose our way (Foucault, 1972:40). Foucault's argument, and the concept of mediaeval medical practices were discussed in Chapter Three.

Concept 4. Mediaeval Concepts of Medicine.

In defence of Foucault's 'rupture of thought' (Pearson, 1975:145), the nineteenth century ushered in the beginning of a scientific approach to medicine. In Chapter One, it was explained that until the Modern Age, medicine had relied on the concepts of the Greek physician Galen. These concepts embraced the belief that the body was balanced between four body fluids: blood, phlegm, choler (yellow bile) and black bile (Porter, 1997:81). While these views persisted into the nineteenth century, they were gradually replaced by a scientific approach to medicine, with the use of the scientific method attributed to the Elizabethan, Francis Bacon. The scientific method was to be used henceforth to diagnose, prescribe treatment, and evaluate the outcomes of medical therapy. We cannot conceive psychiatry and medicine through eighteenth century thought processes, therefore, it is

impossible to enter into dialogue with the rationale of treatment before the coming of the Modern Age.

Few records have come down through the ages of health care in mediaeval times. Belloc believes the dearth of records may be traced to the ravages of the Black Death (1348-52) which decimated whole towns and villages, and weakened the mediaeval structure of life in England. Certainly, in mediaeval times until the dawn of the Modern Age, there was no specialization in medicine. That was to be a phenomenon of the Victorian Age in England. The social and economic significance of the Black Death and implications for future health care were considered in Chapter Three.

Concept 5. The Concept of Psychiatry.

Prior to the nineteenth century, there was no such specialist as a psychiatrist. The latter would emerge and be legitimized by the application of Descartes' concept of dualism to mental illness in the nineteenth century. The relationship of dualism to the birth of psychiatry, and the psychiatrists' consequent justification for establishing power and control over the mentally ill were discussed at length in Chapter Three. Entering the debate on the causative factors of lunacy, psychiatrists had adopted a somatic viewpoint which they considered satisfactory. They had called upon Descartes' work of two centuries earlier, in which he had argued for a distinction between mind and body (Cargile in Honderich, 1995:189-191). In the nineteenth century the alienists, referred to in Chapter Three and soon to become psychiatrists, would declare that the brain was at fault, not the mind, which they identified with the soul. Lunacy, therefore, was a disease of the nervous system of which the brain was a part (Browne, 1837:4).

It was demonstrated throughout the thesis, that philosophical concepts and theories had significantly influenced the development of mental health care in UK, USA, and Australia over the past two hundred years. Traditionally, philosophy in the mediaeval world had been based on the nexus between Faith and Reason interpreted according to the Aristotelian-Thomistic philosophical view. This concept was now replaced by the Enlightenment theories of the Modern Age which rejected the need for a metaphysical input, believing that the human being was able, using individual conscience, to control his/her course throughout life, always improving on past efforts. Having rejected traditional philosophical theory,

Enlightenment philosophers refused to look back to earlier historical times, believing there was nothing there to be learned (MacIntyre,1985:1-5).

In Chapter One it was stated that the task of philosophy is conceptual clarification and the dissolution of philosophical problems; the goal of philosophy is not knowing but understanding (Hacker in Honderich, 1995:912-916). In agreeing with this statement, within the thesis, conceptual clarification of the philosophical views prevalent at the time under review has been presented, and the significance of that philosophical view to the current mental health policy under discussion has been analyzed. Within Chapter Two, the task of philosophy and its goal has been pursued, in order that a foundation might be laid, enabling us to conceptually clarify what we mean by social justice, why we need to understand its relationship to mental health care, and why social justice for the mentally ill is a goal that needs to be part of health care policy and practice. Because social justice and the common good are so central to the aims of this thesis, the concept of Natural Justice and Finnis's theory of Natural Law relating to this view of philosophy will be re-considered now before those theories of the Enlightenment.

Concept 6. The Concept of Natural Law and Natural Rights (Finnis's Theory).

Finnis's theory of Natural Law occupied a large portion of Chapter Two, Part B. The central topic in Finnis's work is justice, with its origins in Greek concepts of justice. In Finnis's Natural Law theory, criteria are justified for the formation of general concepts in the social sciences which prevent these theories from being mere expressions of ideas (Finnis 1980:18). This is seen to be important for the health professionals who number many social science graduates among their numbers. Finnis also justifies the use of this particular framework of Natural Law to state that such a theory would primarily assist the practical reflections of all those concerned to act, whether as judges, statesmen or as citizens (1980:18). Natural Law is seen, therefore, as a suitable theory for use by all members of society, whatever their role in the community may be.

Finnis sees the common good as being reflected in the law enacted by statesmen in Parliament as a just law. Bearing these points in mind, a Natural Law model was constructed in Chapter Two, capable of use in analyzing and planning mental health care, to compare and contrast historical mental health practices in Chapters Three and Four, and capable of repeating these same procedures in considering current mental health practices

in Chapter Five. The model depicted in Figure 2.1 (p 60) takes the form of a pie chart, made up of segments identical to each other. They represent the units used in developing the Natural Law theory, namely, the basic principles of justice, law, authority, obligations, rights and practical reasonableness standing on a base representing the community/society. The segments are joined to each other by a thin black line representing the common good. The complete model is needed with all its components in order to produce social justice. These segments were discussed in detail in Chapter Two and justice itself was seen to be divided into general and particular components, with particular justice further subdivided into commutative and distributive justice. These compartments were also discussed in Chapter Two and it was explained that under Natural Law, all members including the vulnerable, are given access to contributing to the common good according to their capabilities, and to receiving a standard of living comparable with all other members of society.

An added dimension includes the component ‘charity’, because, as Charles reminds us, writing as a Thomist, justice cannot knit society together without compassion, and without charity expressed as unconditional love. for our fellow human beings. (Charles, SJ.1998:397) In Chapter Two (**fn 80**) it was emphasized that charity in the delivery of justice may be seen as another aspect of social justice.

One of our means of demonstrating our commitment to all the community is shown to be by the Principle of Subsidiarity, which is an awareness of our common humanity. This should lead to the strong caring for the weak, the well caring for the ill, the rich sharing with the poor, regardless of race, colour or creed (Charles SJ.1998:396). Finnis sees the Principle of Subsidiarity as an essential element of justice, treading a fine line between, on the one hand giving what is needed to an individual to promote his/her own needs, and on the other hand, in refusing that need, In Chapter Two, the hazards of the Welfare State System were considered, with the inherent dangers of demeaning the individual by determining needs by Statutory definition and bureaucratic regulation. The act of benefit then becomes one of welfare, not a ‘charitable’ good act. The latter is an act of unconditional love afforded to a fellow human being because s/he is a member of the community and deserves to share in the common good. This is the principle of justice translated as social justice (Finnis 1980:146).

In Chapter Two, the value system of Natural Law was described, and seven basic values were defined as life, knowledge, play, aesthetic experience, sociability/friendship, practical reasonableness and religion. All these values which represent a conceptual approach to Natural Law, were discussed in detail, and were shown to relate to mental health care, with the value of ‘friendship ‘ being particularly emphasized in ChaptersTwo and Five, because of its essential need by the mentally ill.

Religion is included by Finnis, but he does not employ metaphysical aids in his Natural Law arguments. For this reason, in a multi-cultural society such as Australia, Natural Law would seem to be an appropriate theory to employ in this thesis. Finnis states that belief in the common good and a value system as described above and in **fn88** of Chapter Two, may be adhered to by Enlightenment and post Enlightenment followers, as well as by members of many religions and denominations of the Christian religion, together with those who have no religion. Consequently, the basic value of religion is not included as an essential component in the Natural Law model, although it may be added should the user prefer to do so. The value of religion has been included in this commentary, however, because it gives a satisfactory completion to the requirement of practical reasonableness, in pursuit of the basic form of human good. It occupies a special place in Chapter Five in discussing a practical example of the implementation of Catholic Social Teaching on Social Justice and Human Rights.

All the values listed are essential for the well being of each individual. The way in which each individual uses them is a problem which every person has to resolve for him/herself. With regard to the value of practical reasonableness, it was shown in Chapter Two that there are nine requirements of this value: a coherent plan of life, no arbitrary preference among values or among persons, detachment, commitment, respect for every basic value in every act, following one’s conscience, requirements of the common good, morality and the product of these requirements. Details of these requirements and their value in providing social justice for the mentally ill were referred to within Chapter Two. (**fns. 93, 94**)

Chapter Two emphasized that law is the common path that all must follow in order to pursue the common good. Sanctions must be available to deter those who would stray from the common good path. The Natural Law belief in the rule of Law is used to re-emphasize how important it is not to ascribe to the mentally ill the misconceived idea of ‘choice’ when

informed choice may be impossible to be made, and the law unwittingly may be broken. The whole question of ‘informed choice’ is described in detail especially in Chapter Two (fn5) as the unconditional love of our neighbour, which combined with justice for all members of society, gives us the common good, in which all members of the community may flourish under the just authority of the rule of law. Unconditional love of our neighbour as demonstrated through the exercise of Natural Law, lies at the heart of the common good.

The term ‘Natural Rights’ is used synonymously by Finnis with ‘human rights’, and he states that Natural Law is in fact about human rights (1980:198). Again this is discussed in detail in Chapter Two and linked into an example of modern ‘rights talk’ in *The Universal Declaration of Human Rights* which is discussed in some detail in Chapter Five where it is shown to have considerable bearing on the human rights of the mentally ill. Human Rights will be referred to again later in this chapter.

The model representing Finnis’s Natural Law Theory, is used throughout the thesis whenever it is deemed appropriate, in order to compare and contrast other theories of justice which have arisen out of the Age of Enlightenment, and which relate to treatment of the mentally ill. It is used in Chapters Two, Three, and Four in order to contrast the Enlightenment theory of Utilitarianism which brought about the institutionalization of the mentally ill within the asylum. It is used throughout Chapter Five to critique the Burdekin Report on the Human Rights of the Mentally Ill, and the Australian Health Ministers Council (AHMAC) Taskforce Investigation into Mental Health Care nationwide in Australia. In laying the foundations for the use of Natural Law throughout the thesis, it is introduced in Chapter Two, to compare, also, the interpretation of social justice principles by Enlightenment theorists such as Miller, with Natural Law as interpreted by Finnis.

3.The Age of Enlightenment and its influence on mental health care.

In order to understand how the concept of asylumdom came to be implemented as an acceptable milieu for the mentally ill, and in order to decide whether such institutionalization provided justice and social justice for the inmates, it is necessary to understand the philosophical views which conditioned people’s thinking and were prevalent at the beginning of the nineteenth century. During that period, Enlightenment philosophical views prevailed in England, North America and most of Europe.

Concept 7. The Concept of Enlightenment

In Chapter Two (**fn1**), it was explained that the term Enlightenment is given to the period of time which was characterized by the emergence in eighteenth century France, of progressive and liberal ideas that began approximately sixty or seventy years before the French Revolution. The philosophical concepts of the Enlightenment developed into theories which underpinned the American Declaration of Independence, and have remained influential in Western thinking for the last two hundred years. Increasing scientific knowledge had given rise to the development of empiricist, naturalist and materialistic doctrines, and to strong opposition to clericalism (Flew, 1979:106).

The philosophers of the Enlightenment came to be known as ‘Encyclopaedists’ after a group of eighteenth century writers who collaborated in the compilation of the ‘Encyclopaedia’ which was explained in Chapter Two. (**fn14**) Those predominant philosophers whose thinking would affect the mentally ill were Henry Sidgwick, Immanuel Kant, John Stuart Mill, John Locke, Jean Rousseau, Rene Descartes and Jeremy Bentham. Those of more recent times included Robert Nozick, John Rawls, Michael Walzer and Michael Sandler. Their influence on the concepts of, for example, society, justice, liberty and mental illness itself was shown in Chapter Two and ensuing chapters, to have been profound. In Chapter Two, the relevant philosophical views of the Enlightenment and Genealogist (Anti-Enlightenment including Postmodernist Schools) were discussed in order to critique and analyze the concepts of justice and social justice as they have influenced mental health care. This was undertaken by comparing the perspectives and value given to these concepts during times of change over the past two hundred years, against the prevailing philosophical view.

- Kant was shown to have great significance for mental health principles. Kant believed all human beings possess the ability to choose between good and evil, because we all possess freewill and can choose what is good and what is right. There is a need to treat the mentally ill as people, not to be patronized or pitied, but recognized as having an equal worth as members of the human family. Kant’s philosophical view holds good, therefore, for all in contact with the mentally ill.

- Rousseau was influenced by Kant, and in Chapter Two it was shown that he believed that in formulating his Social Contract we would invest power in ourselves, that is, in people as a collective entity. It was asserted in that chapter that such self-

determination would be beyond the reach of many of the mentally ill who would be unable to understand Rousseau's concepts.

- Locke also formulated a 'social contract', but did not recommend Rousseau's impractical desire that all should participate in decision making. Locke believed in the human being's right to liberty, freedom and life, so long as others' rights were not infringed. This was seen to be a vague idea where the liberty of the mentally ill was concerned.

- John Stuart Mill echoed Locke's sentiments, and wrote that the only end for which mankind is warranted in interfering with the action of others is self protection. Mill asserted that the only purpose for the exercise of power was the prevention of harm to others. (new ed. 1962:72-3) This statement was shown in Chapter Three to have serious implications for deciding the liberty of the mentally ill, and the rationale for institutionalizing them during the end of the eighteenth and beginning of the nineteenth centuries.

- Rene Descartes argued for a distinction between mind and body. This argument was shown in Chapter Three to have been used by psychiatrists to claim that the mind, identified with the soul was immortal, whereas mental illness was not a disease of the understanding, but of the nervous system. The brain was at fault, not the mind (Browne1837:4). Descartes is, therefore, seen by psychiatrists as crucial to their assertion that psychiatry is a legitimate branch of physical medicine. Descartes' concept of dualism was explained more fully in Chapter Three (**fn37**).

Out of these philosophical concepts would be formulated those theories which would be shown to have influenced mental health care during the past two hundred years. These concepts and the resultant theories may be applied in describing how health care goods and services should be distributed. It has been shown that all have different criteria with specific emphasis on different strategies, but all are significant for the relationship of social justice to mental health care policy and implementation. The most significant are: Utilitarian, Libertarian, Communitarian and Egalitarian theories which arose out of the Age of Enlightenment, and Anti- (post) Enlightenment philosophical views including those of the Postmodernist School.

Concept 8. The Concept of Utilitarianism.

Utilitarian Theories: emphasized a mixture of criteria in order to maximize public utility (Beauchamp and Childress, 1994:334). Classical Utilitarianism has been used throughout the thesis to demonstrate its long lasting effect on politics, economics, mental health policy and health care. Utilitarianism is still accepted today as one of the major ethics and is still politically influential. Its chief exponent in the nineteenth century was Jeremy Bentham whose philosophy of the greatest happiness for the greatest number would include everyone in the calculation, but some would not count as much as others.

In Chapter Two, it was shown that Utilitarianism falls short of Finnis's Natural Law and Natural Rights theory which espouses the 'common good'. The point to Finnis is the incommensurability of human goods. They cannot be weighed and measured in the way that Bentham supposes. Chapter Three demonstrated at some length, how Bentham used Classical Utilitarianism as both a philosophy and a political strategy to change political and bureaucratic structure in England at the beginning of the nineteenth century, and to introduce the concept of institutionalization of those unable to be part of the workforce.

-Concept 9. The Concept of Libertarianism.

Libertarian theories: were shown in Chapter Two to have gained ascendancy since World War II, in Neo-Conservative philosophical theories of which Robert Nozick has been the chief exponent. The application of these theories has formed the lynchpin of the economic rationalism of Thatcherism and Reaganism. For the followers of this philosophical theory, the way to achieve social justice is to permit the market determination of the allocation of wealth and resources. They argue that there should be a minimum floor of welfare support to prevent starvation, and believe to offer more than a basic support would reduce people's desire to contribute to society. Nozick has asserted that members of society are to improve their circumstances using their own initiative. Chapter Four demonstrated that in its modern form of economic rationalism, this theory is unjust and unfeeling to those in need. Chapter Four also showed, that such a pragmatic and unfair theory would not assist the helpless mentally ill to receive equal consideration from an obviously unfeeling society.

Concept 10. The Concept of Egalitarianism.

Egalitarianism emphasizes equal access to the goods in life that every rational person values. Egalitarian theories propose an equal distribution of some goods such as health

care, and carefully avoid making equal sharing of all possible social benefits a requirement of justice (Beauchamp and Childress, 1994:334,339).

One of the most prominent theorists advocating Egalitarianism has been John Rawls, who described a set of principles which he maintained are the principles of social justice, and which provide a right way for distribution of the benefits of 'social co-operation' (1971:4). These principles were elaborated upon in Chapter Two (fn 30). Rawls revisited Rousseau's Social Contract, and described a 'veil of ignorance' in the Original Position. Rawls argued that if a principle of justice was agreed upon behind the 'veil of ignorance', then it would be agreed to unanimously, because no-one would know his/her position in society (Rawls, 1972:136-140). It is possible to discern in Rawls's explanations, how the concept of social justice may be applied to the structure of modern Australian society.

Finnis has argued against this device, in that it does not follow that a principle chosen in the Original Position would be unbiased and fair. In Chapter Two, Finnis's argument was used to show that the needs of the mentally ill, for example, cannot be seen behind a veil of ignorance, when they themselves would be invisible.

Nozick and Rawls radically disagreed with each other over Rawls's Theory of Justice. Nozick believed that the State is justified in performing only those functions which may be used against, for example, force, fraud and theft, and for the enforcement of contracts. Nozick rejects all theories of distributive justice (a part of Natural Law theory), and specifically, Rawls's theory of justice as fairness (1974:167-174). Finnis disagrees with both philosophers. He argues that natural resources from which all things are made, do not come into the world attached to people having entitlements over them as Nozick would have us believe. This fact conditions all entitlements subsequently derived from labour (Finnis, 1980:187n30). It implies the responsibility (namely, the common good), the individual owes to all other members of society including the vulnerable such as the mentally ill, and is clearly part of distributive justice. Finnis's disagreement with Rawls's theory is that the theory remains at a superficial level. Against Finnis's arguments (which were described in Chapter Two Part B), for the need of a philosophical basis of natural reasonableness, some of Rawls's propositions appear flawed. Unlike Natural Law, Rawls does not attribute intrinsic values to the basic forms of good such as truth, play, art or friendship, all of which are especially important to the mentally ill, nor does he give any

satisfactory reason for the decision. Finnis declares that no satisfactory reason is possible, and describes Rawls's 'thin theory' as a 'radical emaciation of human good' (Finnis, 1980: 106). These points were all discussed in Chapter Two.

Concept 11. The Concept of Communitarianism..

According to Communitarianism, which was discussed in Chapter Two, a society is kept together because there is a shared concept of what constitutes the common good. Walzer, who is one of the chief exponents of Communitarianism, criticizes Rawls, arguing that social justice would be achieved through redistribution of resources in various spheres of life within one society (Theophanous, 1994:12). Walzer subscribes to only three principles of distribution, but the possibility of an infinite number of spheres in which these principles apply.

Sandel, another Communitarian has argued, however, that while Libertarians believe firmly in individualism, choosing their ends in life without communal ties, nevertheless, certain communal bonds are constitutive of people's identity, beyond choice. These shared bonds, Sandel affirms to form the basis for a 'politics of the common good' (Sandel, 1982 in Honderich, 1993:783).

All these Enlightenment views imply that each person's conscience will act in a right manner, that individual will towards all neighbours will be 'goodwill', and that law and justice will promote the common good and social justice, while simultaneously encouraging personal freedom. The common good tells us that the needs of the mentally ill seek their accommodation, so that during periods of remission, employers may use that person for his/her good periods. The common good also urges employees to offer friendship, support and understanding to the marginalized. To the Libertarian, such spasmodic employment is uneconomic. Libertarians pay taxes from which governments provide money for health. To provide any further assistance is seen as stealing from the taxpayer.

Social Justice as interpreted by Miller from an Enlightenment perspective

Walzer's concepts were utilized by Miller in the latter's survey of Enlightenment social justice principles which were analyzed in Part B of Chapter Two, and compared with the social justice application of Natural Law theory. An analysis of Miller's defense of social

justice according to Enlightenment principles was shown to have been unsuitable for the mentally ill. Miller believed that three assumptions needed to be made before a theory of justice could be developed: 1 There must be a bonded society with a determinate membership. 2.The principles advanced may be applied to an identifiable set of institutions whose influence on the opportunities in life for individuals may be recognized, and 3.There is some agency, the main one being the State, capable of changing the institutional structure and implementing reform (Chapter Two, **fn 98**).

Miller proposed utilizing a pluralism about justice applied to Walzer's Spheres of Justice (1983). Miller saw difficulties for Walzer in interpreting the situation where people might disagree about how justice requires social good to be allocated (Miller, 1999:25). Miller believed that in this situation, human beings would stand in different kinds of relationships with each other. These relationships could be complex, but Miller saw it as possible to analyze them in terms of a small number of basic modes, namely, solidaristic community, instrumental association, and citizenship. These modes were detailed in Chapter Two (**fn.99**).

Concept 12. The Concept of Citizenship.

Miller emphasized that according to Enlightenment principles, it is an essential concept of citizenship that citizens participate actively in the political affairs of society (Miller,1999:30). All citizens are seen by Miller as being of equal status, enjoying the same privileges, liberties, rights and services provided by the political community for its members. This brings into contention social justice afforded the mentally ill. If members of this part of society are too ill to enter into full understanding of their political commitments, they cannot enjoy full citizenship. Their 'equality' is a tacit acceptance of their physical presence in the community by the rest of society, without any attempt by the majority to incorporate them into the mainstream activities of the community. Miller's theory does not answer the needs of the common good in these circumstances.

In Chapter Two it was emphasized that if citizenship is to be considered as an ethical as well as a legal relationship, it must also entail responsibilities. Miller acknowledges the problems in considering these two aspects and deciding what justice is required in this domain. The needs of people can be met whose fulfilment allows people to participate fully as citizens, or the relief of need may be a collective out of charity, where we discharge our

responsibilities to the needy without viewing them as fellow citizens. It was argued in the thesis that if we hold the latter perspective, gradually those receiving basic subsistence from the community, will be separated in thinking from the mainstream society, and will become isolated and unconnected with the distributive goods offered to the majority. Miller was shown in Chapter Two to believe that using Enlightenment theories of justice and the three criteria described above, held in balance with one another, they will provide a system of fairness. This does not, however, answer the needs of the mentally ill, who were shown particularly in Chapters Two and Five, to require more than fairness. Their need also is one of compassion on the part of all society, with the greater needs of fellow human beings whatever they may be, in order to answer and fulfil those needs, so that the individual may reach his/her potential.

Using Miller's cogently argued theory it is contended that the mentally ill, as all other marginalized groups, are at risk of becoming disparate. The Enlightenment Utilitarian system 'tidied up' the mentally ill into the asylum, so that gradually, the latter became a disparate group. This thesis asserts that using Natural Law concepts and with a firm belief in the common good, this situation may be reversed. Natural Law affirms that the mentally ill have an equal call on distributive justice as a need and assistance from their fellow citizens to reach their potential, regardless of their social, economic, political or intellectual status within the community.

Miller's Principles of Social Justice in relation to Globalization, Multiculturalism and Economic Rationalism

Chapter Four discussed current tendencies towards globalization and multiculturalism, in relation to mental health issues of employment. Miller in relating these problems to his principles of social justice, is shown in Chapter Two as coming to a disturbing conclusion with regard to economic rationalism, multiculturalism and globalization. Miller believes that in the prevailing culture, the traditional view of social justice is declining in importance, because multiculturalism causes people to care less and to disagree about social justice (1999:253). Globalization, he sees as having given States tightly constrained policy options, so that even if there was a political will to assist, steps towards social justice would be blocked (1999:253).

Miller's principles are seen as being complex, changeable and cold, showing no compassion for the disadvantaged, only an impassive acknowledgment of a 'safety net' to provide basic needs. Miller's principles have been challenged throughout the thesis, and it was demonstrated that all Enlightenment theories were flawed when related to the needs of the mentally ill, because they are calculating and appear to be driven entirely by economic considerations to the exclusion of the common good, fairness and compassion for the disadvantaged and marginalized such as the mentally ill. Throughout the thesis, such principles have been shown as less encompassing of the needs of the disadvantaged compared with the advantages offered by Natural Law and Natural Rights as described by Finnis.

While attempting to provide theories of justice, the interpretations were shown to have been applied in ways which negated the intent. Within Chapter Two, in considerable detail it is explained that to see justice only in terms of fairness and equality as Miller and Rawls do, affords grievous harm to those suffering injustice. Gaita has quoted from several sources including Simone Weil, John Gray and Raz, all of whom have emphasized different aspects of the damage done to those unjustly treated, and to society itself, by rejecting the care and compassion the victims need. All this is brought to the fore in Chapter Five. It is shown that the welding together of compassion with justice is needed to provide social justice.

The philosophical paradigms of the Enlightenment remained firmly in place until the end of the Second World War, and social norms appeared to be, for the most part unchanged, while throughout this period, Liberal-Capitalism flourished under, especially, Utilitarianism. In Chapter Two it was shown in some detail that philosophical change, however, had begun to occur during the nineteenth century under the principal influence of Karl Marx and Friedrich Nietzsche. During the 1930s, others such as Jean-Paul Sartre, who saw himself as an existentialist rather than a follower of Nietzsche, and later with the Postmodernist, Michel Foucault, made significant contributions to the concepts of justice and social justice. The significance of Nietzsche and Foucault, and their influence on post World War II thinking will be referred to later in this chapter.

Concept 13. The Concept of Liberalism.

In Chapter Two, the relationship between Marx and Justice during the Industrial Revolution was explained, together with the Enlightenment, and the rise of liberal capitalism. It was explained that the word ‘liberalism’ can refer either to a philosophical view which is that of the human beings’ relationship with the world and with each other, to a political view-an account of the origin and nature of political authority, state and government, or to the economic theory-an account of the creation and distribution of wealth (Charles SJ. 1982:93). Capitalism itself was described in detail in Chapter Two. **(fn 53)**

Marx was not averse to progress, but responded to the injustice manifest in the excesses of liberal-capitalism. Britain was the home of liberal-capitalism during the Industrial Revolution and also the scene of its worst excesses (Charles SJ. 1998:421-3). It was stated in Chapter Two that capitalism initially failed as a progressive force in England during the Industrial Revolution, because of the greed and excesses of many mill owners and other industrialists who showed scant regard for the unremitting toil of the men, women and children they employed, often for minimal wages. It was against the conditions described in Chapter Three that both Karl Marx and Pope Leo XIII railed in the name of social justice, addressing the situation from different points of view.

Marx argued that the value of a commodity depended on the relative quantity of labour required for its production. The part of the value created which went to the producer, Marx named ‘surplus value’ and claimed it to have been stolen from the worker. The significance of Marx’s theory to future mental health care was considered in discussions on the post Enlightenment theories in Chapter Two.

Concept 14. The Concept of Post Enlightenment/Postmodernism.

The Enlightenment philosophers believed in the use of Reason only. While Foucault as a good Postmodernist rejected Faith, he would also spurn the Enlightenment view that there was only one objective way of seeing things through the use of Reason.

- Friedrich Nietzsche’s aims may have been different, but in Chapter Two his methodology was shown to be similar to Marx. An avowed atheist, he wrote with passion that the most important value in life is power. Essentially honest, Nietzsche considered society objectively. His writings aimed at constructing a type of subversive narrative designed to undermine the central assumptions of the Encyclopaedia and hence the

Enlightenment philosophers (MacIntyre, 1990:25). His disagreement was not so much with the Encyclopaedists attempts at rationalization, but at what he saw as the hypocrisy of the Enlightenment movement, especially the theories espoused by Kant.

Nietzsche saw Kant as asserting himself as a rationalist, and then defending metaphysical belief. Nietzsche poured scorn on the Christian values of compassion, gentleness, kindness and friendship. In Chapter Two it was suggested that such an individual as Nietzsche's 'Superman' would lack compassion, and might only assist the underprivileged when s/he felt like doing so. Such a 'Superman' was prepared to take personal responsibility for his own moral actions, including the creation of his own moral rules by which he would attempt to live, and by which he would judge himself.

It was argued that such a philosophical view throws immense responsibility on to the individual, who, without the informed and guided conscience of Natural Law, is left to form his/her own guidelines, morality and evaluation system. Together with the wishful thinking of Enlightenment philosophers, that experience would prevent the repetition of past mistakes, the implementation of Nietzschean theory may be seen as a disappointment. Not every member of the community will care about the disadvantaged. Not all will believe in social justice. It is this option to care or not care according to one's own moral standard which makes Nietzsche's view so unacceptable in developing standards for mental health care.

-Postmodernism.

Chapter Two described postmodernism as essentially anti- Enlightenment, rejecting authority *per se* and promoting scepticism. The latter was explained in **fn 65** of that chapter. While the connections between postmodernism, deconstructionalism and social justice may appear tenuous, they were included so as to explain the thought processes behind one of the most prominent deconstructionalists and a follower of Nietzsche: Michel Foucault.

In Chapters Two and Four, Michel Foucault has been shown to have had a profound effect upon post World War II health professionals' attitudes towards the concept of mental illness and towards the mentally ill. In Chapter Two it was stated that Foucault believed that the differentiation of the group of deviants labelled as 'mentally ill', had kept them excluded from political power and social equity. This exclusion and differentiation, Foucault together with other postmodernists, saw as part of the authoritarianism they

associated with twentieth century Western culture. In Chapter Four, the significance of postmodernism on , especially, mental health care was discussed further.

A foundation of Enlightenment and post-Enlightenment philosophical theories related to mental health care and social justice was laid in Chapter Two. In Chapter Three was discussed the rationale between Benthamism and the changes which brought about the introduction of Asylumdom, initially in England, and then in the USA and Australia.

4. Changes bringing about the introduction of Asylumdom. The relationship between Institutionalization and Benthamism.

Concept 15.The Concept of Asylumdom.

In Chapter Three, it was explained that the concept of Asylumdom implied security, safety and protection. The name itself is synonymous with the institutionalization of the mentally ill in England and Australia throughout the nineteenth and at least the first half of the twentieth century. In mediaeval times, should the mentally ill have no relatives to support them, mediaeval monasticism would care for them in hospitals attached to the abbeys, in what would seem to have been the equivalent of the modern day hospices. Other systems of institutionalization were mostly unknown to the Middle Ages and later Classical Age. After the dissolution of the abbeys during the Reformation, the Elizabethan Poor Law was enacted, and legislated in England for all pauper shelter and health care until the Act was repealed in 1946.

Using a historical narrative approach, Chapter Three described how mental illness prior to the nineteenth century appears to have been treated as part of everyday illness. In an agricultural environment such as existed prior to the Industrial Revolution, it was possible to accommodate and care for the mentally ill within the predominantly village life in England. This did not mean that life was easy for this group of people, who Shorter reported might be chained to a wall in a stable if they proved difficult to manage (Shorter, 1997:2-4).

It was explained how Enlightenment theories interacted with the many social, political and economic changes which occurred at the beginning of the nineteenth century, and would all

contrive to bring about the Industrial Revolution. The change from a predominantly agricultural way of life to an industrial world would affect the entire Western way of living, and would drastically alter the treatment and care afforded to those who were unable to participate as active members in the ever increasing demands of the workforce.

The Industrial Revolution occurring at the dawn of the nineteenth century, saw the development of new industrial cities into which the former agricultural workers from the countryside migrated. This followed changes in agricultural policy which included the enclosure of common land and 'sheep runs' necessitated partly as a result of the ravages by the Black Death upon their population numbers, and also because of the new type of landlords produced by mercantilism and industrialization. It was shown in Chapter Three that such a changed industrial environment with time ruling the workers' day, whereas it had previously been directed by the elements, proved to be too challenging for the frail aged, orphaned small children, the sick and the mentally ill. These marginalized members of the community were seen as a liability to society, being unable to be competent members of the workforce. Few families could afford to provide care for them at home. All family members, men, women and children as young as seven years of age needed to work, often at unremitting toil for twelve or fourteen hours each day, for wages which were a pittance, while many factory owners became rich at their workers' expense.

Chapter Three demonstrated how in the circumstances described above, Classical Utilitarianism, as espoused by Bentham, proved so successful in establishing central government, with its belief in the greatest good for the greatest number. In promoting institutionalization of those who were unable to join the workforce and channeling them into orphanages, the workhouse, hospitals and the asylum, the threat of an 'idle mob' running amok in city streets was averted. The establishment of the police force, and transportation overseas to Australia of felons helped to give realization to the establishment of law and order.

Within Chapter Three the close relationship between Benthamism and the economic theories of Adam Smith was revealed. It was shown that social justice and compassion for the destitute did not enter into the economic strategies of either Smith or the economist, Ricardo. The earlier changes brought about at the dawn of Capitalism were discussed within that chapter in relation particularly, to the effects on the mentally ill and their

sequestration. In Chapter Two it was stated that Britain was home to liberal-capitalism during the Industrial Revolution, and also the scene of its worst excesses (CharlesSJ. 1998:421-3). Market growth was shown in Chapter Three to be such that organizational talent was required to form economic and industrial groups, some of whom ruthlessly pursued their own industrial, power and profit agendas heedless of the spiritual, economic, social, recreational and welfare needs of their employees.

In Chapter Three, it was explained in some detail that Benthamism owed much of its acceptance to the twin successes of Evangelicalism and moral therapy. (Asa Briggs, 1959:6). Among influential people who were touched by evangelicalism and reform were members of the Whig party in Parliament, some of whom were part of the Reform Movement, and carried Evangelicalism to rich and poor alike. (Chapter Three, **fn 20,21**).

Not only were the poorer classes finding it necessary to relinquish responsibility for the mentally ill. In Chapter Three, reference was made to wealthier families who accepted the assistance particularly of apothecaries, doctors or clergymen in offering accommodation to mentally ill relatives. These landlords were not physicians who treated any other type of illness, and they became known, legitimately, as ‘alienists’ or ‘mad doctors’, and their homes as ‘madhouses’. Because they conducted their houses with some degree of secrecy, and also the reluctance of families to discuss their relatives’ illness, rumours abounded of ill treatment and neglect in these establishments. Out of this situation the concept of moral therapy was to be born.

Concept 16. The Concept of Moral Therapy.

Moral therapy was devised by William Tuke of York as a countermeasure to the often inhumane treatment offered to the mentally ill, and was shown in Chapter Three to consist of kindness, patience, and what today would be considered ‘behaviour modification’ in order to treat the inmates in Tuke’s own home. These were unusual methods for that time, when it was well known that even George III was treated with great cruelty during episodes of madness (Chapter Three, **fn26**). Chapter Three described the zeal with which members of the Reform Movement pursued the goal of investigating the private madhouses, and organized petitions urging the Government to close the private homes and introduce asylum reform using moral therapy, in order to remove victims of believed cruelty, and also, the poor from their perceived homes of squalor. With true Enlightenment confidence, the

reformers believed that removing the mentally ill from what were believed to be bad family influences and by employing moral therapy, a cure could be effected, so that the patients could be restored to the community, but more importantly to the workforce.

Within the same chapter, it was described how the alienists saw their livelihood threatened if the private houses were closed down, and care within the asylums should pass to physicians in the form of moral therapy. They promoted asylumdom, with themselves as the only competent group to take control of the situation. Moral therapy was included by them as part of their knowledge base. The reformers who had scant knowledge or understanding of mental illness, and little contact with the mentally ill, having started their campaign for mental health reform by condemning alienists, persuaded themselves to change sides, and support the alienists' claim. After much needed reform of the House of Commons with the passing of the Reform Act of 1832, it was possible for Benthamism to hold sway through the Whig Party, and for the Lunacy Act of 1845 to be passed. Henceforward, the mentally ill could be legally committed to the asylum, some of them for the rest of their lives.

With doctors, now styled 'psychiatrists' appointed to direct and administer the asylum, mental illness was shown in Chapter Three to have been medicalized as a specialty, and psychiatry to have been established as part of the medical profession. Their position of authority within the asylum, and as gatekeepers for entry to and discharge from the asylum, with the full authority of the law, gave the psychiatrist immense power.

Within this chapter, it was shown that the dream of introducing moral therapy was an illusion. Soon overwhelmed by numbers of the chronically insane, the asylums became warehouses for the reception of the unwanted mentally ill. Only by strictly enforced regimentation could the institution function. Social justice was shown to be an unknown quantity for most inmates. Each day was regimented and stretched out in weary monotonous routine. As the numbers grew, so did the stories of brutality and unkindness. In a role that was mostly janitor and partly keeper, with no medical therapy available to provide adequate treatment, the nursing assistants were recruited from among the rough, uncouth and pauper types. Neither they nor psychiatrists enjoyed the status of general physicians or Nightingale nurses. Further more, because rural land was cheap to purchase, and in the interests of protecting the 'sane community' from the insane, most asylums were

built at a distance from towns. This made it virtually impossible for relatives to bear the cost of visiting. Consequently, the inmates became increasingly separated from the community, leading a sequestered life as an unknown section of society. The inmates devolved into second class citizens, deprived of human rights and social justice. This was the pattern of asylumdom which developed in the United States of America, (USA) and was exported by England to Australia.

The reality of asylumdom in all three countries was described in Chapter Three. Asylumdom would be maintained as the preferred method for treating and controlling the mentally ill for nearly two hundred years. Treatments which the inmates were subjected to within the asylum, some without any scientific basis for their use, were shown to assuage the psychiatrists' desire to do something, but also demonstrated the helplessness and vulnerability of patients.

Why asylumdom was seen as the only means of coping with the mentally ill has puzzled historians, sociologists and health professionals alike. This problem was explored in Chapter Three, and Scull's suggestion that it was probably because no-one could think of anything else to do, short of providing a welfare system that would have changed the fabric of Victorian Society, seems as feasible a solution as any, although extremely unsatisfactory for the victims.

Benthamism indeed provided the greatest happiness for the greatest number, but unfortunately for the mentally ill, it did not include all citizens. It fell far short of the common good. The mentally ill assisted in the provision of happiness for the free citizens by being unseen, detached from society and 'keeping the city streets tidy' by their absence. They were thus denied their liberty, their ability to reach their potential, and friendship with a cross section of 'normal' humanity, social interaction, and normal, family life. In considering the haphazard diagnosis of mental illness in the nineteenth century, these were serious injustices.

Asylumdom was shown to have remained the preferred venue for the mentally ill until startling changes throughout the Western World post World War II saw its demise. The consideration of de-institutionalization in relation to social justice for the mentally ill formed the theme for Chapter Four

5. Changes which brought about the demise of asylumdom

Societal Changes influenced by Postmodernism

Following World War II, a time of rapid change was entered upon World-wide, in which post Nietzschean views came to the fore, particularly in the form of postmodernism. These changes were described in Chapter Four. The revolution in philosophical thinking which occurred between 1945 and 1969, brought to fruition the dormant division observed by the Enlightenment philosopher David Hume between 'is' and 'ought' Hume's observations were commented upon in Chapter Two, when it was explained that their inclusion in the thesis was because it appeared that Hume had opened up a gap between 'facts' and 'values' (Sacks, 1997:90). In 1936, Ayer took Hume's argument to its logical conclusion, and asserted that if there is no legitimate transition from 'is' to 'ought', then moral judgments are merely expressions of emotion (Sacks, 1997:95).

After the Second World War, Sartre manipulated Kant in similar manner, changing the emphasis from eighteenth century free choice as synonymous with established custom, to 'existential' choice. "Choice" was discussed fully in Chapter Two and in **fn5** of that chapter. The significance of 'choice' in health professionals' decision making post World War II, was discussed in Chapter Four. For Sartre this meant the individual taking responsibility for one's own moral life. Chapter Two had shown how Sartre saw many people as appearing to use God as an excuse to lean upon or hide behind. They thus abrogated personal responsibility for their actions, using religion and official regulations to plead inability to show moral courage to exercise their own judgment and free will (in Fagothey SJ. 1972:187-201).

In Chapter Four, it was explained that within this environment Foucault's treatise on Madness and Civilisation was translated by Laing and published in the New Statesman, a London journal with a large academic following. Its attack on institutionalization struck a sympathetic chord with the mood of that time, and signalled the release of a wave of hostility towards, *et al*, health care, especially mental health care. The interaction of Post modernism and other changes taking place in the post War years, was discussed in relation to mental health care and social justice. In the same chapter, it was shown how this hostility coincided with the development of neuroleptic drugs, which enabled many psychiatric conditions to be stabilized, so that there was a real possibility of patients being cared for within the community.

Concept 17. The Concept of De-institutionalization

Instances of injustice were given in Chapter Three, with the introduction and maintenance of asylumdom for over one hundred and fifty years, together with the removal of the mentally ill from the view of the community. Chapter Four concentrated on the apparently rapid removal of the mentally ill from asylumdom back into the community in the atmosphere of constant change following World War II, a process known as normalization or de-institutionalization. It was intended that the mentally ill would be returned to a community which would protect and tolerate them, providing adequate accommodation, as well as emotional and economic support, so that they might live as normal a life as possible, by reaching their potential. Should hospitalization be required, it was envisaged that it might be offered in a psychiatric unit attached to the general hospital, thereby avoiding any claims of stigma which postmodernists believed to have been attached to mental illness.

This happened at a time when the post war generation began to assert itself in a negative way, with the welfare benefits and 'safety net' of immediate post war governments being taken for granted. The paradigm shift in social behaviour demonstrated the prominence of genealogical philosophical views of permissiveness and non-judgmental attitudes. These changes were explained further in Chapter Four (fns39-41) when the development of 'the Pill' signified woman's control over her reproductive function, and the subtle influence of Feminism on society was demonstrated in attitudes of some health professionals to their own roles in relation to what was seen as the paternalistic roles of men in society, including the attitude of psychiatrists towards their patients.

One of the great changes in health care post World War II was the emergence of the drug companies as power houses driving health management. With the discovery of Penicillin, the development of antibiotics and the neuroleptic drugs, health became an industry to be guided and influenced by chemists and accountants. In such an environment, it was reputed that many psychiatrists were attracted to private practice and care of clients with minor personality traits of depression or unhappiness. This diminished the numbers of qualified psychiatrists available to treat genuine psychiatric disorders. Drug use proliferated, despite the efforts of many conscientious medical practitioners who attempted to stay the enthusiasm for such practice.

Foucault and his supporters found this to be an ideal time in which to launch their attack upon psychiatry in the anti-psychiatry movement, declaring that there was no such thing as mental illness, and arguing that psychiatry was merely a manifestation of power and coercion. In such an atmosphere, the decanting of the mentally ill from the asylums in all three countries under investigation, was accelerated. In Chapter Four it was demonstrated that after the demise of asylumdom, apparently scant regard was given to the well being of the mentally ill during what seemed to be frequently, their rapid removal from the asylum back into the community without, often, preparation of family, community or infrastructure support.

Coinciding with the upsurge of economic rationalism as the preferred socio-economic force, the mentally ill were set adrift in a sea of relativism, amid a plethora of competing philosophical views, with no reliable value system to which they could cling. Often without family, dependable housing, or hope of employment, with often little health infrastructure to ensure their supply of medication and social needs, they became frequently, health recidivists, going through the 'revolving door' process of inpatient treatment, discharge from hospital, deterioration in health and re-admission once more. It was in this volatile situation that the argument of the thesis culminated in the view that that Enlightenment and post Enlightenment philosophical theories had failed miserably in providing social justice for the mentally ill, whereas Finnis's theory of Natural Law and Natural Rights might well provide a more satisfactory alternative.

6.Changes in the Western World following World War II leading to universal recognition of social justice and human rights needs of the mentally ill, with special reference to Australia.

By the 1980s, politicians in each of the three countries under review, had become aware through their constituents, of mental health care problems. They also realised that the mentally ill, now housed in the community had become an overt group, and would need far more financial support in the health budgets than hitherto. Mental health problems could no longer be overlooked. The events post World War II leading up to the Declaration of Human Rights, and eventual investigation in Australia of the social justice needs of the mentally ill, formed the subject for Chapter Five. Both the ensuing Australian Reports were analyzed within this chapter, using Finnis's Natural Law theory to determine whether the

findings of both documents would provide satisfactory outcomes to safeguard social justice for the mentally ill in the foreseeable future.

Concept 18. The Concept of Human Rights.

Within Chapter Five, Finnis's statement was developed that everything written in Natural Law and Natural Rights is about human rights. After a historical review of the evolution of human rights, it was shown that the human rights concept was developed during and after World War II, using a low key League of Nations model. The model was formally presented in documents founding the United Nations, and in writing the *Universal Declaration of Human Rights*, 1948. Relevant Articles pertinent to health care and the common good were described. It was stated that both the Charter and the Universal Declaration reflect a deep agreement on fundamental values concerning the worth of the human being (Drinan, 2001:8). At the same time, it was shown that there was an incompleteness in both documents. There is much discussion about 'rights', but as Simone Weil and Glendon have perceived, if rights are stressed in preference to obligations, and without the ingredient of compassion, the dimension of charity is missing. Finnis upholds Weil's statement that obligations are prior to rights. More detail is offered on this topic in examples discussed in Chapter Five. **(fns.8.9)**

Within Chapter Five, an analysis was made of each of the two investigations into mental health care in Australia using the Natural Law Model already described in Chapter Two. In Chapter Five, Miller's statements were challenged concerning the inadequacy of Natural Law to take a valid position in answering modern needs. A short discussion followed of Papal Encyclicals dating from the time of Leo XIII, revealing the role of the Catholic Church as a champion of social justice and human rights, and pertinent to the relation between Natural Law, the common good and social justice.

Leo XIII was a philosopher who promoted Natural Law theory. His Encyclical *Rerum Novarum* (15 May, 1891), is believed to be the pivotal point marking the beginning of the Catholic Church's Social Teaching in the Modern World. In condemning the greed of capitalists, Leo XIII argued that the manifest evils were not the result of private ownership but of liberal philosophy which assumed it was not necessary for any social control to be exercised over capitalists to ensure they met their responsibilities. The significance of the

Papal Encyclicals of the twentieth century and their message for peace and justice featured within this chapter.

An example was given of Natural Law theory and practice as implemented in current mental health care offered by the St. John of God Health Services, Australia. A detailed description followed of the work of this Catholic charitable world-wide organization, founded over five hundred years ago. The Order focuses particularly on mental health issues, including drug and alcohol related problems, youth depression and suicide. While offering acute hospital based care, they also support homeless people with chronic mental disorders, counselling and therapy centres, and, for those suffering from post natal depression, a pre and post natal support network.

In undertaking this Mission, the Order is utilizing Natural Law unconsciously, simply by carrying out, to the best of their ability the desire to use Christian principles and assist their disadvantaged fellow members of society. In so doing, it was shown in Chapter Five, they are demonstrating the practicality of Natural Law in serving the vulnerable and marginalized mentally ill, maintaining a strong belief in the common good and bearing witness to the importance of social justice. It was shown that they are also affirming their belief in human rights for all members of the community.

-The Burdekin Report

The Burdekin Report was conducted by Brian Burdekin, Commissioner for Human Rights who observed that there had been over forty inquiries in NSW alone into psychiatric facilities and services since the first recorded case of mental illness in 1801. All these inquiries had concentrated on maladministration, under-resourcing, overcrowding, abuse and harassment, together with inadequate legislation. Prior to the Burdekin Report, only two inquiries in the latter half of the nineteenth century had a national perspective, but both had kept the same terms of reference as their predecessors. Many of the complaints reviewed in Chapter Four (fn23) of the thesis in regard to abuse and disregard of patients' rights within asylumdom were shown in the Report to be still continuing after World War II.

Burdekin, in dealing with the de-institutionalization phase of the mentally ill, decided to include evidence from health professionals, carers, the mentally ill themselves, and any

concerned members of the community. Burdekin believed that with the cultural differences in a multi-cultural society as Australia had become, with differing legal definitions on mental illness, and a host of complex issues, the Report should adopt an anecdotal approach within which it would be possible to include evidence indicating abuse or neglect of human rights. Because of this structure, the result was inevitably repetitious. Burdekin used a sociological framework, related to aspects of authority, social control, disempowerment, alienation, stigma, discrimination and prejudice. He combined this with an unstructured interviewing technique in order to provide anecdotal evidence from consumers, carers, professional organizations, non-government and government instrumentalities, and from health professionals, for example, psychiatrists, nurses, occupational therapists and social workers. Details concerning the chapters of the Burdekin Report are to be found at Appendix 5.4 of the thesis. The outcomes of the Report highlighted for the Government Working Party, the areas of deficiency and need in mental health care which required to be addressed.

Using examples from the Report, and working carefully through the value system of Natural Law, countless instances were given in the thesis of social injustice, disregard of human rights and indifference to the common good where the mentally ill were concerned. In critiquing the Report, the value system promoted by the Natural Law model was employed: namely, the basic human goods of life, knowledge, play, aesthetic experience, friendship, and practical reasonableness. Using this methodology, it was possible to compare and contrast the findings and the conclusions of the Report with what could have been done if the philosophical basis of social justice had been incorporated into the construction of the investigation. Instead, the Report had relied on the legalities of the justice system which aimed to provide only fairness and equality. Evidence of many defects in mental health care compared with the Natural Law value system were described in Chapter Five. (fn24).

One of the flaws in the Burdekin Report was that in the interviews, evidence was merely recorded as stated. No questions appear to have been asked by the Commissioners. No deepening or enlarging of the evidence seems to have been attempted. This was noticeable in the area examined by the thesis in the value component of Natural Law: 'knowledge'. There were numerous complaints listed by the mentally ill and their carers of a lack of understanding of their needs by many health professionals. Evidence given by psychiatrists

to the Burdekin Investigation, alleged that General Practitioners, who form the primary contacts for the mentally ill, received scant theoretical preparation as medical students for treating such patients. No attempt was made to ask the health professionals who included nurses, social workers and occupational therapists about the content of their educational curricula and to link their knowledge background with the knowledge required to address the needs of the mentally ill. Nor was evidence sought of their preparation to work in this specialized field of health care. Those who had received a University education, had frequently been exposed to a certain amount of psychology in their undergraduate studies. They had been for the most part, educated in order to work in the 'normal health sector'. They had not been prepared for exposure to the problems of the mentally ill. Many of these health professionals had read a small amount of postmodernist studies, and where they had read uncritically, they were liable to promote postmodernism in the guise of sociological semantics, 'deconstructing previous discourse and reconstructing it' in a manner that linked postmodernism to the more abrasive aspects of early feminism, in their belief that earlier discourse had promoted patriarchal repression of women (Speedy, 2000:61). (fn27)

In Chapter Five it was observed that there is a danger when indulging in empowerment talk that it promotes the importance in gaining power, in order to overcome whatever oppression is perceived. In the individual struggle for power, the powerless, such as the mentally ill are often overlooked. They do not have any power to exercise. Burdekin glossed over these matters, collectively describing them as deficiencies in education. A lack of knowledge in the form of education was reported to exist throughout the community including those in contact both professionally and socially with the mentally ill. This was reported as disempowering the mentally ill (described as 'consumers' throughout the Report), and translated in the thesis analysis into lack of understanding of the Natural Law language of the necessity of play, aesthetic experience, friendship and practical reasonableness for the mentally ill.

Using his sociological framework, Burdekin worked his way through the need for human rights and social justice for the mentally ill among the homeless, women, children and adolescents, people with dual and multiple disabilities, people living in rural and isolated areas, Aboriginal and Torres Strait Islander People, people from non-English speaking backgrounds, forensic patients and prisoners, in that order. In each group, the same cumbersome and overwhelming amount of unstructured, anecdotal evidence was given.

Precipitate and unprepared emptying of the asylums, unemployment, lack of educational facilities for re-skilling and education, and lack of suitable accommodation had resulted in high levels of homelessness, which Burdekin believed unless addressed quickly, would result in development of a new subculture (Burdekin,1993:548-576). General conclusions to the Burdekin Report are to be found at Appendix 5.5.

The immediate recommendations by Burdekin referred to a need for increase in funding, all related to the areas discussed in the Report. Special emphasis was laid on the need for suitable and adequate accommodation. A massive education program not only for professionals related to mental health work, but also for all members of society involving carers, professionals and the mentally ill themselves in community programs was recommended, all with the same stress on financial support.

To make these recommendations, without any suggestion as to what strategies might be employed to obtain the desired results was a weak point among many weaknesses. While the anecdotal evidence by sheer weight of numbers was impressive, it provided a repetitious, inconclusive account which was perforce subjective and unstructured. Consequently the Report's findings were weakened, because the entire Report was based on nothing else but subjective opinion. To provide a Report, especially one intended to be offered to Government, one must justify the conclusions. The Report cannot hide behind anecdotal evidence, no matter how many examples are given. To keep repeating endlessly that the mentally ill are being denied human rights, without giving a justified, strong moral basis for the practical reasonableness of human rights themselves, to offer such a conclusion without any data on which to base one's investigations, was to leave inconclusive evidence hanging in mid air. By using a sociological model alone, Burdekin merely offered a model of ideas. It made a satisfactory result from his findings impossible to determine. Had Burdekin employed a model using Finnis's Natural Law and Natural Rights theory, it would have given an ethical foundation to his observations. Chapter Five described in detail the many shortcomings of the Burdekin Report, and believed countless examples had been offered of what is wrong with health care policy, but had shied away from offering a means to rectify the sorry state of affairs. The Report was described in Chapter Five as a serious disappointment having promised so much.

- The Australian Health Ministers Advisory Council (AHMAC) Taskforce.

Nevertheless, the AHMAC Taskforce was able to make use of the many instances of social injustice Burdekin had outlined in order to address the contravention of human rights. In twenty four succinct pages, Dr. Raphael, Chairperson of the Taskforce, outlined the findings of her committee and in a proactive manner focused on what must be the future of mental health care. In 1992, members of AHMAC agreed to a major reform process and unanimously endorsed the National Mental Health Strategy as a co-operative program between Federal, State and Territory Governments. Chapter Five described the two five year plans agreed upon by AHMAC. The first five years covered the period 1992-3 to 1997-8 and included the years of the Medicare agreements which were referred to in **fns.36-38,40-41** of that chapter. The second five year plan covered the years 1997-98 to 2002-03, and incorporated the Australian Health Care Agreements which superseded the Medicare Agreements. These financial arrangements brought mental health care into mainstream health care fiscal provisions for the first time.

- The National Mental Health Care Strategy.

The Strategy was described in four documents which were detailed in Chapter Five. During the first five year plan, the Commonwealth Government provided in excess of \$250 million in support of the Strategy. National Mental Health Reports have been provided every two years, the last in 2004. They are detailed accounts of the activities of the Mental Health Branch of State and Commonwealth Health Departments. In Chapter Five these activities are detailed in **fns37-42**. In 2002, the National Mental Health Report showed that spending had increased, the main driver being the growth in cost of over 400% by psychiatric drugs provided through the Pharmaceutical Benefits Scheme (PBS).

All the annual National Mental Health Reports acknowledge that providing finance alone does not reform and answer the needs of a complex area such as the Mental Health Care Service. There needs to be a corresponding recognition of the needs of those providing care, of the educational needs of the community, as well as monitoring of the standards of care, to ensure that the mentally ill are not falling behind the level of care given to other citizens.

Much has been accomplished during the past fifteen years in the way of research and implementation of short term and initiation of long term planning. However, it has been

acknowledged in the 2002 and 2004 National Reports, that much more emphasis is now to be placed on developing a capacity to report on outcomes both at individual level and also for whole populations.

As with the Burdekin Report, it has been stated in Chapter Five that the aims and objectives of the National Mental Health Strategy would have been clarified if a definition had been provided for 'social justice'. When a community is coming to terms with a radical change in attitude toward a section of the community, such as the mentally ill, it is essential that all members of the community can agree on what precisely their goals represent. **(fn 45)**

While the National Mental Health Strategy has identified the many areas to be researched and deficiencies remedied, it has undertaken the work from a purely rational point of view. Burdekin used a sociological approach. Raphael attacked the problems from a psychological aspect. Consequently, Raphael has acknowledged the psychologically holistic needs of the individual to include, for example, play, recreation and friendship, but both investigators have steadfastly ignored the philosophical need of a value system to which these attributes could have been anchored. The model of Finnis's Natural Law and Natural Rights would have rectified this deficit. The model has been shown in Chapter Five to work well in supporting mental health care. Chapter Five demonstrated in a variety of ways that the inclusion of all the segments of the Natural Law theory with its basis of the community/society, all connected by the common good would have acted as a yardstick by which to measure political and economic decisions. At the moment, these are described as 'socially just' or 'unjust' according to whether the conditions are politically or economically expedient.

7.Conclusion.

The wishful thinking of the National Mental Health Strategy is not borne out by the current mental health situation. Psychiatric health care is not a preferred option of work for most Australians, nor do most generalist nurses have any knowledge as to the needs of the mentally ill patient. Chapter Five instanced the situation in South Australia where unable to be offered suitable professional care and accommodation, the mentally ill were shackled to their beds in general wards, because nursing staff had no idea how to care for them, nor did they have time to cope. **(fn46)** The sensationalism driven media do not assist on these occasions to solve the actual health care problem.

It is contended that economic rationalism developed during the 1980s and driven by the Enlightenment theory of individualism has produced an avidly greedy, ego-centric community of 'winners' and desperately destitute 'losers' (Glendon, 1991:109-144). This thesis further contends that, without a change in philosophical theory to one which espouses the common good of all persons, and a value system such as Finnis has described, the massive re-education of the community in order to understand mental illness and the acceptance of the mentally ill as equal members of society will remain a pipe dream. A foundation supportive of Natural Law by an injection of moral justification, would add moral fibre to the social justice debate, taking it out of the emotional environment and justifying both rights and obligations for all members of society. Chapter Five has asserted that Natural Law would also strengthen the human rights argument, which seems to wax or wane according to whether political support is available or not. It would offer the compassionate view of justice tempered with mercy, at a time when compassion seems to have vanished from both public and private life in Australia.

This thesis contends that Reports, no matter how scientific and impressive they may be, can only reflect the intentions of government policy. In Chapter Five it was stated that the implementation of the common good, the desire to promote both rights and obligations, the promotion of social justice and compassion in our dealings with the mentally ill, can only come from an unconditional love of our fellow human beings. It cannot be legislated for. In the current level of cynicism as pervades the Western world, the task ahead is daunting, but it is one to which in the interests of social justice for everyone, all of us have to be committed, all the days of our lives.

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