

4 Criminal or Lunatic, Prisoner or Patient? Confining Insanity in the Late Nineteenth Century

Whether the fifty insane convicts in Pentonville are of prison manufacture, or have found their way thither through judicial bungling, it is certain that their incarceration in such a place is highly improper.... Their presence in prison must seriously embarrass the officers, and interfere with its regular administration; and the denial to them of medical treatment at the time when it might be of service in rescuing them from lifelong insanity, is a cruel wrong.¹

By the late nineteenth century, it was widely acknowledged that many insane criminals were languishing in prisons in England and Ireland. However, this statement, appearing in the *British Medical Journal (BMJ)* in June 1880, was unusually forthright about this state of affairs, with its comment on judicial bungling and claim that the prison could ‘manufacture’ insanity. The article was triggered by the suicide of one of the Pentonville ‘lunatics’, and, describing the special measures that had been put in place to deal with the fifty insane prisoners in Pentonville, its governor explained that twenty cells were under observation, and that many prisoners had been deprived of their tin knives for fear that they would harm themselves. The article went on to state that it was very likely that the discipline of the prison was to some degree responsible for the prisoners’ insanity and suicidal propensities, but also that some prisoners had suffered a miscarriage of justice, being insane at the time of their trial, and ought never to have been Pentonville in the first place.²

While highlighted as a pressing issue by the *BMJ*, the annual report of the Directors of Convict Prisons for 1880, far from being ‘embarrassed’, referred to the suicide in a curt, matter-of-fact manner, without further comment. Prisoner G.77 had committed suicide by hanging himself in his cell. He had been subject to epileptic attacks, sometimes preceded by ‘periods of excitement’, but he had never exhibited any suicidal tendency

¹ Editorial, ‘Lunatics in Prisons’, *British Medical Journal (BMJ)*, 2:1035 (30 Oct. 1880), 710–11, at p. 711.

² *Ibid.*, pp. 710–11.

and his mental condition had been certified as 'sound' on his reception into the prison.³ It was also reported that over the course of the year nine prisoners had been moved to other prisons as 'insane', together with an additional sixteen patients with 'mental afflictions other than insanity'.⁴

The suicide of prisoner G.77 illuminates the mounting disquiet concerning the mental wellbeing of prisoners and the 'disposal' of those suspected of suffering from mental illness, which by the second half of the nineteenth century increasingly preoccupied English and Irish prison administrators and medical officers, psychiatrists working outside of the criminal justice system and the medical press. Questions were raised about how prisons dealt with inmates who developed symptoms of mental disorder following their trial and removal to prison, many of whom appeared to be mentally disordered on their committal. While prison administrators and medical officers were concerned to pinpoint cases of feigned insanity, the subject of the following chapter, and to downplay the deleterious impact of prison regimes on the mental health of prisoners, by the late nineteenth century they too were expressing dismay and frustration at the accumulation of large numbers of lunatics in prisons ill-equipped to deal with them.

The scale of the problem was illustrated in 1889 when the Commissioners of Prisons for England and Wales reported that 349 insane persons had been held in prison that year, of whom 210 had been moved on to asylums. According to Dr R.M. Gover, Medical Inspector of Prisons, as many as 290 were found to be insane on reception.⁵ Gover complained that 'local prisons ... are at present used to some extent as hospitals for the treatment of mental and bodily disease'. As they were not intended or adapted for that purpose, he continued, 'this practice should as far as possible cease'.⁶ In Ireland the story was similar, though the numbers involved were smaller, and by the 1880s it appears that most insane prisoners were being moved on to asylums. The 1884 Report of the Royal Commission on Prisons in Ireland highlighted, as one of the 'most serious points' brought to their notice, the large number of prisoners certified insane in the Irish convict prisons of Mountjoy and Spike Island, remarking, 'The existence of such an excess ought certainly to have attracted the notice of the authorities to a greater

³ Report of the Directors of Convict Prisons (RDCP), 1880–81 (1881) [C.3073], Pentonville Prison: Extracts from the Medical Officer's Report, pp. 317, 321.

⁴ Ibid., Table IV, 'Cases of Insanity and of Mental Affections other than Insanity', p. 321.

⁵ Anon., 'Report of the Commissioners of Prisons', *Lancet*, 134:3455 (16 Nov. 1889), 1012; R.M. Gover and Pugin Thorton, 'Report of the Commissioners of Prisons, To the Editors of the *Lancet*', *Lancet*, 134:3456 (23 Nov. 1889), 1085–6, at p. 1085.

⁶ Anon., 'Report of the Commissioners of Prisons', *Lancet* (16 Nov. 1889), p. 1012.

extent than it appears to have done.’⁷ Dr Hercules MacDonnell, Medical Officer at Dundalk Prison, criticised the Royal Commission, however, for its ‘curt dismissal’ of the concerns of witnesses relating to the lengthy detention of lunatics in prisons, noting

It is impossible to conceive any course more likely to prove hurtful to persons who have become insane, than that of subjecting them to the discipline and regime necessary in prison life. These cases require the most skilled personal attention, which it is quite impossible for them to obtain in gaols ... and when it is borne in mind that in the majority of prisons there is no adequate provision for the proper nursing of even sick prisoners, it can be readily seen that lunatics must fare very badly.⁸

In 1888, 85 insane prisoners were moved from local gaols to asylums in Ireland and in 1892, 71.⁹ The General Prisons Board complained regularly in their reports about this objectionable state of affairs, a complaint upheld by the *Lancet*: ‘It is not alone the inhumanity of subjecting lunatics to the unsuitable discipline of an ordinary prison which calls for remark, but also the waste of power involved in providing by means of makeshift arrangements for their safety.’¹⁰ While the *Lancet* castigated the Irish prison authorities for their negligence on this score, it is clear that both English and Irish prisons were under enormous pressure to deal with large numbers of insane prisoners in environments unsuited for their confinement.

An impressive literature has explored trial proceedings involving the insanity plea, the role of doctors as ‘expert witnesses’ and the processes of deciding whether defendants were ‘mad’ or ‘bad’, acting under an insane impulse and thus not to be held responsible for their actions or guilty of a criminal act.¹¹ As Roger Smith has demonstrated, it became more common over the course of the nineteenth century for medical men to

⁷ Royal Commission on Prisons in Ireland, Vol. 1. Reports, Digest of Evidence, Appendices; Minutes of Evidence, 1884 (1884–85) [C.4233] [C.4233–I], p. 40.

⁸ Hercules MacDonnell, ‘A Review of Some of the Subjects in the Report of the Royal Commission on Prisons in Ireland’, *Journal of the Statistical and Social Inquiry Society of Ireland*, 8:63 (July 1885), 617–23, at p. 621.

⁹ Anon., ‘The Prison Reports’, *Lancet*, 132:3395 (22 Sept. 1888), 589; Anon., ‘General Prisons Board Report’, *Lancet*, 140:3617 (24 Dec. 1892), 1472.

¹⁰ Anon., ‘The Prison Reports’.

¹¹ Roger Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* (Edinburgh: Edinburgh University Press, 1981); Roger Smith, ‘The Boundary between Insanity and Criminal Responsibility in Nineteenth-Century England’, in Andrew Scull (ed.), *Madhouses, Mad-Doctors, and Madmen: A Social History of Psychiatry in the Victorian Era* (London: Athlone, 1981), pp. 363–84; Joel Peter Eigen, *Witnessing Insanity: Madness and Mad-Doctors in the English Court* (New Haven, CT and London: Yale University Press, 1995); Joel Peter Eigen, *Mad-Doctors in the Dock: Defending the Diagnosis, 1760–1913* (Baltimore, MD: Johns Hopkins University Press, 2016); Tony

put forward a plea of insanity, though such pleas were not necessarily successful.¹² Notwithstanding, many defendants were found to be insane prior to or during their trials, and, based on the verdict of ‘not guilty by means of their insanity’, and in Ireland ‘guilty but insane’, moved to lunatic asylums or, after 1850 in Ireland and 1863 in England, to state criminal lunatic asylums at Dunderum and Broadmoor.¹³

This scholarship has, however, focused only in a limited way on the detection of mental illness among prisoners after their conviction and imprisonment, the transfers of prisoners to asylums, and the debates surrounding the appropriate placement and care of insane offenders, many of whom ended up traversing back and forth between asylums and prisons.¹⁴ Yet, as Janet Saunders has pointed out with regard to England, in addition to decisions reached during trials, the issue of the disposal of mentally disordered offenders became increasingly important after mid-century. Alongside the removal of prisoners labelled as ‘insane convicts’, county and borough asylums became ‘the major receivers of offenders found insane in local prisons’, typically accused of mundane

Ward, ‘Law, Common Sense and the Authority of Science: Expert Witnesses and Criminal Insanity in England, ca. 1840–1940’, *Social and Legal Studies*, 6:3 (1997), 343–62; Katherine Watson, *Medicine and Justice: Medico-Legal Practice in England and Wales, 1700–1914* (Abingdon: Routledge, 2019); Martin J. Wiener, ‘Murderers and “Reasonable Men”: The “Criminology” of the Victorian Judiciary’, in Peter Becker and Richard F. Wetzell (eds), *Criminals and Their Scientists: The History of Criminology in International Perspective* (Cambridge: Cambridge University Press, 2006), pp. 43–60; Pauline M. Prior, *Madness and Murder: Gender, Crime and Mental Disorder in Nineteenth-Century Ireland* (Dublin: Irish Academic Press, 2008); Pauline M. Prior, ‘Mad, Not Bad: Crime, Mental Disorder and Gender in Nineteenth-Century Ireland’, *History of Psychiatry*, 8:32 (1997), 501–16; Pauline M. Prior, ‘Prisoner or Patient? The Official Debate on the Criminal Lunatic in Nineteenth-Century Ireland’, *History of Psychiatry*, 15:2 (2004), 177–92.

¹² Smith, ‘The Boundary between Insanity and Criminal Responsibility’, p. 364.

¹³ For Broadmoor, see Jade Shepherd, ‘“I Am Very Glad and Cheered When I Hear the Flute”: The Treatment of Criminal Lunatics in Late Victorian Broadmoor’, *Medical History*, 60:4 (2016), 473–91; Harvey Gordon, *Broadmoor* (London: Psychology News Press, 2012); Mark Stevens, *Broadmoor Revealed: Victorian Crime and the Lunatic Asylum* (Barnsley: Pen & Sword, 2013). For Dunderum, see Prior, *Madness and Murder*; Brendan Kelly, ‘Poverty, Crime and Mental Illness: Female Forensic Psychiatric Committal in Ireland, 1910–1948’, *Social History of Medicine*, 21:2 (2008), 311–28; Brendan Kelly, *Custody, Care & Criminality: Forensic Psychiatry and Law in 19th Century Ireland* (Dublin: History Press, 2014).

¹⁴ Janet Saunders, ‘Institutionalised Offenders: A Study of the Victorian Institution and Its Inmates, with Special Reference to Late Nineteenth Century Warwickshire’ (unpublished University of Warwick PhD thesis, 1983), especially ch. 7, which focuses on criminal lunatics and practices of referral by magistrates. See also Janet Saunders, ‘Magistrates and Madmen: Segregating the Criminally Insane in Late-Nineteenth-Century Warwickshire’, in Victor Bailey (ed.), *Policing and Punishment in Nineteenth Century Britain* (London: Croom Helm, 1981), pp. 217–41.

crimes and sentenced to short prison terms.¹⁵ While prison doctors expressed extreme concern about the number of cases of insanity in prisons, asylum superintendents were up in arms about the clusters of insane criminals accumulating in their institutions, 'the pests of all asylums'.¹⁶ They were described as difficult to manage and disruptive for the other patients, at a point when many asylums were under great pressure to admit increasing numbers of pauper lunatics and facing severe shortages of accommodation. Yet at the same time, asylum superintendents were often highly critical of prison medical officers for their failure to detect and move genuinely insane prisoners to asylums where they could receive appropriate care.

Chapters 2 and 3 have demonstrated how concerns about damage limitation shaped policy and practical responses to the treatment of the mentally disordered in English and Irish prisons. Highlighting mental illness and removing prisoners out of the prison system into asylums ran the risk of being interpreted as the failure of prison regimes to improve the minds of prisoners or linked to accusations that the discipline itself had triggered mental breakdown. This was a problem for both the showcase convict prisons and local prisons attempting to implement the separate system as effectively as possible. As Chapter 5 explains, concern about prisoners' efforts to feign mental illness led to extreme caution in transferring prisoners to asylums, and many prisoners whose insanity was doubted would remain in prison until their sentences terminated. Nonetheless, many prisoners were moved out of prisons, to Broadmoor and Dunderum, or to county, district and private asylums, and it is the mechanisms through which decisions were reached to prompt removals, and the experiences of prisoners who were declared insane following their incarceration that is the main focus of this chapter. For a number of prison surgeons, the business of assessing prisoners began in the courtroom or during the remand process, while for others the mundane processes of diagnosing mental illness and authorising transfers to asylums, and oftentimes back to prison became part of their day-to-day workload.

This chapter is divided into two sections. Section I investigates the series of legislative changes and institutional provisions that were put in place in England and Ireland from early in the nineteenth century to manage the allocation of patients to prisons and asylums, as well as

¹⁵ Saunders, 'Magistrates and Madmen', pp. 220, 223.

¹⁶ [W. Charles Hood], 'Criminal Lunatics. A Letter to the Chairman of the Commissioners in Lunacy', *Journal of Mental Science*, 6:34 (July 1860), 513–19, at p. 513.

focusing on the courtroom as the site where prisoners declared insane around the time of their trials would, in theory, be sifted out of the prison system. Yet, as explored in section II, many prisoners suffering from insanity continued to be committed to prison, while responses to particular prisoners, the limitations of institutional space and resources, and the diverse actions of individual doctors and prison and lunacy administrators demonstrate that legal frameworks were subject to hugely varied interpretations in practice. Such actions were closely related to prison medical officers' growing experience and claims of expertise in psychiatry, expressed in both the courtroom and prison, and their ability to assess and diagnose insanity among criminals, as well as their anxieties about how the accumulation of mentally ill prisoners might conflict with their assertion that they were best equipped to deal with such cases. From time to time, as also examined through exploration of a select number of such cases in section II, the regular business of assessment and transfer exploded into high-profile disputes surrounding removals, triggered by insane prisoners arriving in a dreadful state at asylums, with severe injuries or close to death. These cases illuminate the depth of intraprofessional antagonism and competing claims of knowledge and expertise that could arise around the issue of dealing with mentally disordered offenders.

I PROVISION FOR CRIMINAL LUNATICS AND LUNATIC CRIMINALS

Accumulating in Prisons and Asylums: Legislative Change and Institutional Provision

The question of where to house the criminally insane taxed prison and asylum administrators from the early nineteenth century. As asylum facilities began to be set up in England and Ireland, accommodating the criminally insane within them presented enormous challenges in terms of the availability of space, governance and their impact on the welfare of the other patients. In England the 1800 Criminal Lunatics Act first made provision for the custody of criminal lunatics, those found unfit to plead or acquitted of an offence on the grounds of insanity at 'His Majesty's Pleasure', which could mean indefinitely.¹⁷ In effect, however, with no provision for the costs of their maintenance, most criminal lunatics continued to be confined in workhouses or more commonly

¹⁷ Prompted by the trial of James Hadfield, who in 1800 attempted to assassinate George III. See Nigel Walker, *Crime and Insanity in England, Volume One: The Historical Perspective* (Edinburgh: Edinburgh University Press, 1968), pp. 74–83.

gaols, often in terrible conditions, where ‘the poor criminal lunatics became objects of sport to their unfeeling fellow-prisoners, by whom they were taunted, ridiculed and tormented’.¹⁸ In 1808 the County Asylum (Wynn’s) Act authorised counties to set up asylums on a permissive basis with provision for pauper patients and criminal lunatics. It was also recommended that a separate asylum for criminal lunatics be set up at Bethlem to serve the whole country, supported at the state’s expense, and in 1816 two wings opened at Bethlem to accommodate sixty criminal patients.¹⁹ A few years later it was found necessary to double the accommodation at Bethlem, and in 1849 a separate ward was erected at Fisherton House private asylum for the excess of criminal lunatics.

In 1816 further provision was made to transfer convicted criminals who became insane during their sentences, with a warrant from the Home Secretary, and in 1840 this was extended to unsentenced prisoners and prisoners awaiting execution. Those transferred under these acts were to be certified insane by two magistrates and two medical men, and would only be returned to prison with the approval of the Secretary of State.²⁰ These provisions initially applied only to those prisoners who were tried by a jury for more serious crimes, but after 1840 petty offenders showing signs of insanity might be sent to a county asylum.²¹ Even with the absorption of criminal lunatics into the slowly expanding county asylum system (with twenty-four established in England and Wales by 1850), and the expansion of its facilities, Bethlem was overwhelmed by this class of patient, so much so that the *Lancet* was prompted in 1855 to describe the asylum as a mere receptacle of insane criminals rather than a curative institution ‘into which the waifs of criminal law are swept, out of sight and out of mind’.²² In 1857 the Commissioners in Lunacy referred to the indiscriminate mixing of patients without regard for their previous

¹⁸ W. Charles Hood, *Suggestions for the Future Provision of Criminal Lunatics* (London: John Churchill, 1854), p. 107.

¹⁹ David Nicolson, ‘A Chapter in the History of Criminal Lunacy in England’, *Journal of Mental Science*, 23:102 (July 1877), 165–85, at pp. 169–70; Jonathan Andrews, Asa Briggs, Roy Porter, Penny Tucker and Keir Waddington, *The History of Bethlem* (London and New York: Routledge, 1997), pp. 403–5.

²⁰ Patricia Allderidge, ‘Bethlem to Broadmoor’, *Proceedings of the Royal Society of Medicine*, 67:9 (Sept. 1974), 897–9; Saunders, ‘Institutionalised Offenders’, pp. 221–2.

²¹ 3&4 Vict., c.54 (1840); Kathleen Jones, *Lunacy, Law, and Conscience 1744–1845* (London: Routledge & Kegan Paul, 1955), p. 219.

²² ‘Notices and Reviews of Books’ (John Charles Bucknill, *Unsoundness of Mind in Relation to Criminal Acts* (1854)), *Lancet*, 65:1642 (17 Feb. 1855), 187. See also Andrews et al., *The History of Bethlem*, pp. 502–6. The passing of 1845 County Asylums Act (together with the 1845 Lunacy Act) made it mandatory for counties to establish asylums, and the second half of the century saw sustained growth in their number and size. See Andrew

moral and social condition and the ‘skeleton cupboards’ of Bethlem in the form of the male criminal lunatic wards, with its ‘dens ... more like those which enclose the fiercer carnivora at the Zoological Gardens than anything we have elsewhere seen employed for the detention of afflicted humanity’.²³

In Ireland, the 1787 Prison Act and Lunatic Asylum Acts of 1817 and 1821 dealt with ‘the custody of insane persons charged with offences’. In 1821 provision was made for persons acquitted on grounds of insanity or persons indicted and found insane at the point of their arraignment, allowing for ‘safe custody’ in prison, prior to transfer to an asylum under a Lord Lieutenant’s warrant, and specified that ‘the custody of insane persons, charged with offences in Ireland shall be regulated in like manner as in England’.²⁴ The persistent accumulation of the insane in prisons had been one of the drivers behind the establishment of district asylums, and Ireland set up its national asylum system earlier than England. By 1835 nine asylums had been constructed, but their capacity to absorb the insane prisoners languishing in gaol was limited. Even as asylum superintendents, such as Mr Jackson of Armagh Asylum, referred in 1828 to the ‘many hopeless cases admitted from the gaols’, criminal lunatics continued to accumulate in prisons.²⁵ Particular pressure was felt in Dublin, served by Richmond District Asylum and in the areas covered by the district asylums of Armagh and Londonderry, ‘where the numbers crowding the County Gaols are truly distressing’.²⁶ During the 1840s it was proposed that an extra ward be set up at Richmond Asylum dedicated to criminal lunatics, but this was never brought into effect, and by 1849 – swelled by the Great Famine – the number of lunatics confined in gaols had increased to 338.²⁷

The situation was complicated in Ireland by the implementation of the Dangerous Lunatic Act in 1838, resulting in a new category, of ‘dangerous lunatic’, making provision for the certification of individuals ‘who displayed a propensity to commit an indicatable crime while denoting a “derangement of mind” and who were perceived to represent a threat to

Scull, *The Most Solitary of Afflictions: Madness and Society in Britain, 1700–1900* (New Haven, CT and London: Yale University Press, 1993), p. 281.

²³ Anon., ‘Reports of the Commissioners in Lunacy to the Lord Chancellor’, *Quarterly Review*, 101:202 (Apr. 1857), 353–93, at p. 361.

²⁴ 27 Geo. III, c.39 (1787); 57 Geo. III, c.106 (1817); 1&2 Geo. IV, c.33 (1821).

²⁵ Report of the Inspectors General of Prisons of Ireland (RIGPI), 1828 (1828) [68], p. 12.

²⁶ Report from the Select Committee of the House of Lords Appointed to Consider the State of the Lunatic Poor in Ireland (1843) [625], p. x.

²⁷ Report on the District, Local and Private Lunatic Asylums in Ireland, 1848 (1849) [1054], p. 10; Anon., ‘Lunatic Asylums in Ireland’, *Dublin Medical Press*, 25:633 (Feb. 1851), 124.

the community'.²⁸ This group came to account for the majority of the 'lunatics' confined in Irish prisons and asylums, most of whom had not been charged with a criminal offence. The 1843 Report on the State of the Lunatic Poor in Ireland claimed that the number of lunatics in gaols and bridewells had doubled over the previous two years to 214, of whom only forty had been charged.²⁹ In England, the same legislation also required two Justices of the Peace to commit dangerous lunatics to an asylum or licensed madhouse rather than a gaol. However, its impact was felt far less than in Ireland, and, when applied, tended to result in asylum admissions rather than confinement in prison.³⁰ In Ireland too dangerous lunatics, along with those becoming insane in prison, were in principle to be transferred from prisons to district asylums on the recommendation of two magistrates, who sought medical advice on such cases from local doctors attached to workhouses, gaols or dispensaries. In 1847 Lunacy Inspectors Dr Francis White and Dr John Nugent issued a circular advising all magistrates to seek medical advice, and after 1848 new certification forms were structured to include more medical information, and gaol governors obliged to ensure that the completed form accompanied persons moved from gaols to asylums.³¹ However, until the Dangerous Lunatic legislation was amended in 1867, after which alleged lunatics were to be sent directly to an asylum, the confinement of dangerous lunatics put even more pressure on gaols, where they might be held for lengthy periods given the shortage of asylum accommodation. In 1866 some 685 dangerous lunatics were taken into county and borough gaols, of whom 514 were sent on to asylums. Dublin's Richmond Bridewell housed 95 male lunatics and Grangegorman 98 female lunatics.³² Up until 1867 such practices 'established an intimate link between insanity and criminality', associating the lunatic with the 'degradation of the prison'.³³ Though some had separate lunatic cells or wards, or even padded cells, many public gaols had no effective means of

²⁸ 1&2 Vict., c.27 (1838); Catherine Cox, *Negotiating Insanity in the Southeast of Ireland, 1820–1900* (Manchester: Manchester University Press, 2012), p. 77. See also Mark Finnane, *Insanity and the Insane in Post-Famine Ireland* (London: Croom Helm, 1981), pp. 88–104 and Damien Brennan, *Irish Insanity* (London and New York: Routledge, 2014), pp. 79–83 for the operation of the Dangerous Lunatic legislation.

²⁹ Select Committee State of the Lunatic Poor in Ireland (1843), p. ix.

³⁰ Hansard HL Deb, 18 Mar. 1852, vol. 119 cc1230–44, Earl of Shaftesbury.

³¹ Cox, *Negotiating Insanity*, pp. 79–80.

³² RIGPI, 1866 (1867) [3915], pp. xxv–xxvi. The passing of the 1867 Act resulted in a rapid fall-off in the number of mentally disordered persons defined as 'dangerous lunatics' in prison, from 334 in 1867 to 53 in 1868 and 5 in 1869: Brennan, *Irish Insanity*, p. 83.

³³ Oonagh Walsh, "'The Designs of Providence": Race, Religion and Irish Insanity', in Joseph Melling and Bill Forsythe (eds), *Insanity, Institutions and Society, 1800–1914*

separating the lunatic from the criminal. 'The insane were often', as a result, 'made the sport of the guilty and subjected to indignities and cruel treatment', though White and Nugent also pointed out that association with sane prisoners, alongside the removal of alcohol and other prompts to mental breakdown, might be beneficial.³⁴

Both the Lunacy Commissioners in England and Inspectors in Ireland lobbied for the setting up of specialist institutions for criminal lunatics in response to constant complaints about the disadvantages of housing them in the prison system, as well as the grave pressures they placed on asylums.³⁵ Dr Francis White, who prior to becoming Inspector of Lunatics in 1845 served as Inspector of Prisons with responsibility for overseeing lunatic asylums in Ireland, argued that bringing criminal lunatics together would save expense, increase security and put a stop to the use of district asylums for a purpose that they were never intended to fulfil.³⁶ In evidence presented to the 1843 Select Committee he provided many examples of failures within both prisons and asylums, including the case of the female lunatics housed in Grangegorman Prison, where there was an absence of proper accommodation, classification, employment and trained keepers: 'They are in a most confined Place, and a great Number of them in Strait Waistcoats and muffed, and Two of them strapped to narrow inconvenient Chairs.' Their presence, White concluded, interfered with prison discipline and in practice they were often cared for by other prisoners.³⁷ While eager to assert the quality of prison doctors – 'they are all clever Men' – they were unable 'to devote their Time to the treatment of insanity so much as those who are attached to Asylums'.³⁸ Transfer papers and arrangements were also noted to be defective, and prisoners often arrived at asylums 'in a most

(London and New York: Routledge, 1999), 223–42, at p. 225; Cox, *Negotiating Insanity*, p. 80. See also Oonagh Walsh, 'Lunatic and Criminal Alliances in Nineteenth-Century Ireland', in Peter Bartlett and David Wright (eds), *Outside the Walls of the Asylum: The History of Care in the Community 1750–2000* (London and New Brunswick, NJ: Athlone, 1999), pp. 132–52.

³⁴ *The Irish Times*, 12 July 1867, p. 2; Cox, *Negotiating Insanity*, p. 81. Despite a tightening up of the law in 1845, the Dangerous Lunatic legislation was also subject to misuse by those attempting to use the procedures to admit family members to asylums, while families also protested about their relatives being retained in prison instead of being transferred to asylums, arguing that asylum treatment might assist in their recovery.

³⁵ Prior, *Madness and Murder*, pp. 30–1. ³⁶ *Ibid.*, p. 31.

³⁷ Select Committee State of the Lunatic Poor in Ireland (1843), Evidence of Francis White, 20 July 1843, p. 15.

³⁸ *Ibid.*, p. 16.

wretched and deplorable state'. They were also noted to be more prone to escape attempts.³⁹

In England too pressure mounted for the creation of a specialist facility, particularly as county asylums were under increased pressure to admit what appeared to be ever-growing numbers of patients, including in some areas of the country many Irish migrants.⁴⁰ In 1852 the Commissioners in Lunacy (who after 1850 were also responsible for lunatics confined in gaols) claimed that there were 436 lunatic criminals in asylums: 175 in county asylums, 104 in Bethlem, 108 in provincial private asylums, and 41 in metropolitan private asylums, with the remaining eight being held in hospital.⁴¹ The Report bemoaned the association of criminal lunatics with ordinary patients, to whom they caused pain and disquiet: 'the Language and Habits of criminal Patients being generally offensive, and their Propensities almost invariably bad'.⁴² According to the Commissioners, they interfered with the routine and discipline of the asylum, with their efforts to feign insanity and to escape, and their bad habits caused insubordination and dissolation among the other patients. They also required stricter custody and strengthened 'the common delusion that an asylum is a prison'.⁴³ Such issues were pointed out time after time by the Commissioners, just as they had been in Ireland a decade earlier, as they repeatedly advocated for a state criminal asylum, reaffirming that mentally ill prisoners were 'morally tainted with crime' and 'unfit for association with the ordinary inmates of Asylums'.⁴⁴ Including individuals who had murdered fellow-prisoners and assaulted attendants, they terrified the other patients, who came to believe that the asylum was a prison, retarding their recovery.⁴⁵

This campaign was supported by eminent asylum superintendents, such as Dr Charles Hood, who, increasingly frustrated about the overcrowding and conditions at Bethlem, initiated its reform.⁴⁶

³⁹ Report on the District, Local and Private Lunatic Asylums in Ireland, 1846 (1847) [820], Ballinasloe District Lunatic Asylum, p. 28, Limerick District Lunatic Asylum, p. 41. See the final part of this chapter for accounts of the condition of transferred patients and Chapter 5 for escape attempts.

⁴⁰ Scull, *The Most Solitary of Afflictions*, and for the case of asylum expansion in Lancashire, Catherine Cox and Hilary Marland, "'A Burden on the County": Madness, Institutions of Confinement and the Irish Patient in Victorian Lancashire', *Social History of Medicine*, 28:2 (2015), 263–87.

⁴¹ Report of the Commissioners in Lunacy, 1852 (1852–53) [285], p. 43.

⁴² *Ibid.*, p. 33.

⁴³ *Ibid.*; Nicolson, 'A Chapter in the History of Criminal Lunacy in England', p. 171.

⁴⁴ Report of the Commissioners in Lunacy, 1854 (1855) [339], p. 47.

⁴⁵ Hansard HL Deb, 18 Mar. 1852, vol. 119 cc1230–44, Earl of Shaftesbury.

⁴⁶ Hood, *Suggestions for the Future Provision*; W. Charles Hood, *Criminal Lunatics: A Letter to the Chairman of the Commissioners in Lunacy* (London: John Churchill, 1860). Charles Hood was appointed as Medical Superintendent at Bethlem in 1852 and held the post

Dr John Charles Bucknill, superintendent of the Devon County Asylum at Exminster, agreed that Bethlem was clearly inadequate, but suggested (somewhat at odds with the findings of the Commissioners in Lunacy) that the county asylum could be a useful resource for treating carefully selected criminal lunatics, persons often committing minor offences and lacking true criminal propensities, who could be considered as 'lunatics of criminal disposition'. He also argued that his experience showed him that the other patients could be sympathetic to this class of patient rather than offended by them.⁴⁷ One such case was an agricultural labourer, 'generally industrious, but was fond of drink, and then liable to committ [*sic*] all manner of petty offences'. He was also thought to be 'a little weak in the head'. He was committed to the house of correction for six weeks for indecent exposure and there found to be insane. Taken into Exminster Asylum, his maniacal excitement passed off quickly and he was described as jovial and industrious. After eight months he was discharged recovered by order of the Secretary of State. Three years later the man was again committed to prison 'for want of sureties to keep the peace' and then readmitted to Exminster. At this point Bucknill concluded that 'As he is intensively fond of cider, and as cider causes in him maniacal excitement, the asylum is probably the best place for him.'⁴⁸

Based on his experience at Bethlem, Charles Hood advocated for an improved and specialised state asylum, but also recommended that not all criminal lunatics should be confined together, as this would deter recovery, increase public prejudice and, as a result, create a new 'bastille'. Like Bucknill, Hood suggested, minor offenders should be placed in county asylums.⁴⁹ Hood also presented accounts of numerous cases confined in Bethlem, who were no longer insane but who he was unable to discharge. Between 1852 to 1858 120 prisoners charged with murder, attempted murder or personal violence were acquitted and seventy-nine

for ten years. He was responsible for reversing Bethlem's poor reputation and campaigned for the segregation of the criminally insane: <https://history.rcplondon.ac.uk/inspiring-physicians/sir-william-charles-hood>

⁴⁷ John Charles Bucknill, *An Inquiry into the Proper Classification and Treatment of Criminal Lunatics* (London: John Churchill, 1852), pp. 7–8, 17, Appendix, Case XVI. Bucknill served at the Exminster Asylum between 1844 and 1876, and also co-authored the first comprehensive textbook on psychiatry in 1858: Andrew Scull, 'Bucknill, Sir John Charles (1817–1897)', *Dictionary of National Biography (DNB)*, <https://doi-org/10.1093/ref:odnb/3874> [accessed 6 May 2020].

⁴⁸ Bucknill, *An Inquiry into the Proper Classification and Treatment of Criminal Lunatics*, Appendix, Case VII. The Appendix included numerous similar cases admitted to Exminster Asylum.

⁴⁹ Hood, *Suggestions for the Future Provision*, pp. 134–40. See also Richard Hunter and Ida Macalpine, *Three Hundred Years of Psychiatry* (London: Oxford University Press, 1963), p. 1020; Andrews et al., *The History of Bethlem*, p. 502.

of these were received at Bethlem. In a number of cases, no symptoms of insanity had been observed since admission.⁵⁰ In 1857 J.P., an 'expert thief', well known to the police in London and the West of England, committed murder in Westminster Workhouse where he was taken suffering from delirium tremens. He was tried and acquitted on the grounds of insanity and removed to Bethlem. At the time of reception, he was, according to Hood, sane and had since shown no symptoms of insanity. An ordinary lunatic asylum was no place for a character with such 'vicious tendencies', who had been in prison eleven times, Hood stressed, but neither was Bethlem. 'Yet though perfectly sane, the doors of every prison are closed against him, and he must remain a tenant of the lunatic asylum, where he produces constant anxiety to those who have the charge of him.'⁵¹ Similar issues were raised concerning cases of convicts admitted to Dunderum during the first five years of its operation. In some instances their sentences had expired, and others were simply deemed to be inappropriate subjects for confinement in Dunderum, such as Mary Sullivan, sentenced to seven years' transportation for larceny, who was described as weak-minded rather than insane. Dunderum's physicians, William Corbett and Robert Harrison, believed that Sullivan, who was unable to speak English, would be better off in an asylum in her native county Kerry, where she would have someone to talk to. Two legal advisors were brought in to provide an opinion on the general situation and concluded that prisoners were entitled to be discharged if recovered, while those still of unsound mind should be restored to the care of their friends or sent to the district asylum.⁵²

By the mid-nineteenth century official reports and publications on the challenges of dealing with insane offenders increasingly adopted the terms 'lunatic criminals' or 'insane convicts' to distinguish this group from 'criminal lunatics' who had been found insane prior to or during the trial process. As also reflected in the medical taxonomies discussed in Chapter 3, use of such attributions was by no means consistent, and a crisp division into 'bad' or 'mad' was not strictly adhered to. While plans were put in place to set up a state criminal asylum in England, Bucknill referred to the problems of trying to sift out criminal lunatics and the implications in terms of institutional care, when those 'who have become insane from the long indulgence of criminal propensities' were mixed

⁵⁰ Hood, *Criminal Lunatics*, p. 16.

⁵¹ *Ibid.*, pp. 14–15. Hood's account provides several examples of similar cases.

⁵² Report on the District, Criminal and Private Lunatic Asylums in Ireland, 1857 (1857) [2253], Appendix 1: Cases on Behalf of the Crown as to the Admission of Patients into the Central Criminal Asylum, Dunderum, who have become insane subsequently to their conviction, pp. 71–2.

with 'those who have become criminal for want of timely protection during their insanity'.⁵³ Further complicating the discussion, he expressed concern that many 'regular insane' confined in public asylums displayed violent, mendacious and immoral tendencies that made them more unmanageable than many categorised as criminal lunatics.⁵⁴ He described the present system of classifying criminal insanity as 'arbitrary', depending upon the manner in which the insanity developed and the persons appreciating its nature.⁵⁵ The English Commissioners in Lunacy and the Inspectors for Ireland described insane offenders interchangeably as 'criminal lunatics' and 'insane convicts', and the term 'criminal lunatic', far from being reserved for those committed to asylums rather than prisons after being found not guilty by means of their insanity, continued to be widely applied to prison inmates who became insane after committal.⁵⁶ Yet there was a push towards differentiating between these two groups in terms of facilities and treatment, Hood urging any new institution to establish rigorous separation between the two classes of patient who had been confined together at Bethlem: 'The criminal lunatic may be a man of education and refinement brought by the deep affliction of insanity to his present position, or he may be a debased character, a hardened villain, who becomes insane while undergoing the punishment which his crimes have deserved.'⁵⁷

Spurred on by continuing pressure from Francis White, with the support of the Lord Chancellor, who also pointed to the benefits in terms of cost and security, Ireland was first to open a specialised state institution, the Central Criminal Asylum at Dundrum in 1850 (Figure 4.1). In 1845 the Central Criminal Lunatic Asylum Act transferred inspection duties from the Inspectors of Prisons to the Inspectorate for Lunacy, who took over responsibility for the oversight and inspection of asylums, and established a central asylum for insane persons charged with offences. Designed by Jacob Owen, architect to the Board of Public Works who also worked with Joshua Jebb on Mountjoy Convict Prison, Dundrum had provision for 120 patients, 80 men and 40 women, and took admissions directly from court as well as from prisons on the authorisation of

⁵³ John Charles Bucknill, *Unsoundness of Mind in Relation to Criminal Acts* (London: Samuel Highley, 1854), p. 142.

⁵⁴ *Ibid.*, p. 144. See also evidence contained in the Report of the Commission to Inquire into the Subject of Criminal Lunacy (1882)[C.3418], Evidence of Dr C. Medlicott and Dr E. Sheppard.

⁵⁵ Bucknill, *Unsoundness of Mind*, p. 143.

⁵⁶ Report of the Commissioners in Lunacy, 1854, pp. 46, 47.

⁵⁷ Hood, *Criminal Lunatics*, pp. 3–4.



Figure 4.1 The Criminal Lunatic Asylum, Dundrum, Dublin. Transfer lithograph by J.R. Jobbins, 1850, after J. Owen
Credit: Wellcome Collection. Attribution 4.0 International (CC BY 4.0)

the prison surgeon.⁵⁸ With its two divisions, the largest group of inmates were those committing offences while ‘labouring under insanity’, ‘where the disease itself depriving their acts of legal or moral responsibility, condones the criminality’, while the second, less welcome, group, those becoming insane while in prison, ‘not unfrequently bring with them to the Asylum the same obstinacy, impatience of restraint, and perversity of feeling, which had rendered them unmanageable under prison discipline’.⁵⁹ In 1856 twenty-four out of 127 inmates at Dundrum were under sentences of penal servitude.⁶⁰

In 1863 England followed suit with the opening of Broadmoor Asylum (Figure 4.2). Built under the direction of Sir Joshua Jebb, Pentonville’s architect and Chairman of the Directors of Convict Prisons, it was larger than Dundrum, with provision for 100 female patients and 400 male patients. It was also designed to house two classes of patient – Queen’s

⁵⁸ Annual Report of Commissioners of Public Works (Ireland), 1847–48 (1848) [983], pp. 15–17; P. Gibbons, N. Mulryan and A. O’Connor, ‘Guilty but Insane: The Insanity Defence in Ireland, 1850–1995’, *British Journal of Psychiatry*, 170:5 (1997), 467–72; Kelly, ‘Poverty, Crime and Mental Illness’, p. 315.

⁵⁹ Report on the District, Criminal and Private Lunatic Asylums in Ireland, 1874 (1874) [C.1004], Central Asylum Dundrum, p. 104.

⁶⁰ *Ibid.* (1857), Appendix 1: Cases on Behalf of the Crown as to the Admission of Patients into the Central Criminal Asylum, Dundrum, who have become Insane Subsequently to their Conviction, p. 71.

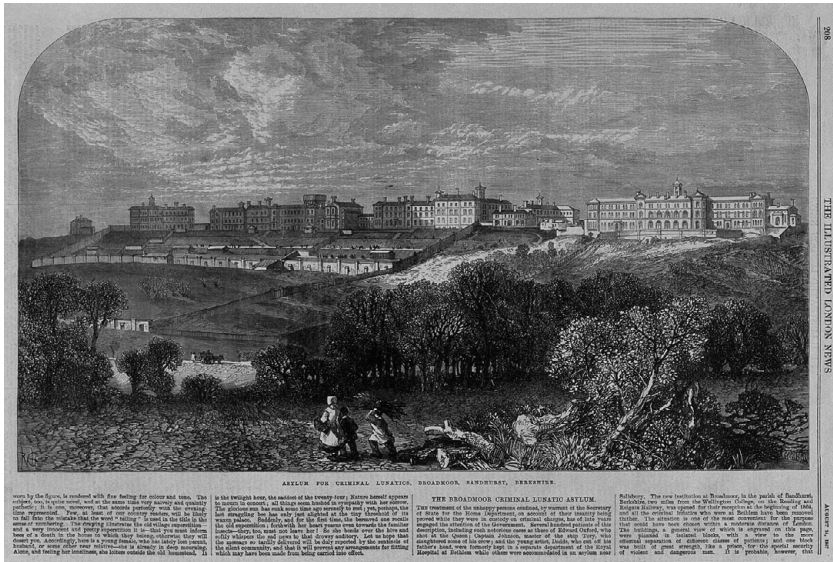


Figure 4.2 Asylum for Criminal Lunatics, Broadmoor, Berkshire, taken from *Illustrated London News*, 1867
 Credit: Wellcome Collection. Attribution 4.0 International (CC BY 4.0)

Pleasure patients, found insane before or during their trial at a higher court, and insane convicts, admitted while undergoing penal servitude – a division reinforced by Dr William Orange, who served as Broadmoor’s second Superintendent between 1870 and 1886.⁶¹

The first, and by far the more numerous, comprises those unfortunate persons who, in their various callings, have acquitted themselves blamelessly of their duties up to the period when they have become insane; then, under the influence of delusion, and perhaps not watched by those around them, or under a sudden impulse, they commit a crime. The important point to be observed is the sequence of events: first insanity, then crime, the crime being as clearly traceable to the insanity as the effect is to cause. The second class comprises persons whose histories are widely different. It is made up of those who for many years have been habitual criminals, have been frequently the inmates of gaols, whose lives have always been antagonistic to the laws that govern and restrain the rest of mankind. While in prison, these persons are difficult to manage, suspicious of those placed over them, impatient of

⁶¹ Shepherd, ‘I Am Very Glad and Cheered When I Hear the Flute’, p. 475.

discipline, insubordinate, and destructive. Sooner or later they are certified to be insane.⁶²

Many of this second class were declared sane or recovered in Broadmoor and were sent back to prison. Those staying in Broadmoor until their sentences expired might be released or moved to another asylum. Following concerns about the number and character of patients transferred from prison and the contamination of the Queen's Pleasure patients, they were subjected to a harsher regime, and spent more time in seclusion. Feigners were often described as a 'third class' of patient, and in both Broadmoor and Dundrum, once identified, moved quickly back to prison. At Richmond District Asylum, which took large numbers of prisoners transferred from Dublin's local prisons, its Superintendent, Joseph Lalor, adopted a similar division to that established at Broadmoor and Dundrum, into the insane but largely honest, whose offences were caused by their insanity, and the habitual criminal, whose offences were largely part of their everyday life. The former might also be treated in district asylums, even though it was acknowledged that there were great disadvantages in mixing the latter with general asylum inmates. Lalor also suggested that 'systematic and skilled education and training are obviously called for in the case of all inmates of asylums, who whether from insanity or criminality may be classed more or less as criminal lunatics, and who are prone to breaches of the moral laws'.⁶³

Owing to the pressure on Broadmoor, in 1874 a decision was made to incarcerate male lunatic convicts in a separate wing in Woking Invalid Prison instead of Broadmoor, which it was argued offered 'greater security for safe custody ... especially fitted for convicts whose lunacy is sometimes assumed and who are often dangerous'.⁶⁴ However, in 1888, following doubts about the legality of housing insane convicts in a prison rather than criminal asylum (Woking was never appointed an asylum under the Broadmoor Act), this decision was reversed and a new block commissioned at Broadmoor especially for convicts.⁶⁵ Prisoners becoming insane while incarcerated in county or borough gaols, meanwhile, continued to be sent to county asylums, even though many asylum

⁶² Anon., 'Criminal Lunatics: Broadmoor and Dundrum', *BMJ*, 1:699 (23 May 1874), 686–7.

⁶³ Joseph Lalor, 'On the Use of Education and Training in the Treatment of the Insane in Public Lunatic Asylums', *Journal of the Statistical and Social Inquiry Society of Ireland*, 7:54 (Aug. 1878), 361–73, at p. 362.

⁶⁴ Commission on Criminal Lunacy (1882), p. 17.

⁶⁵ For more details, see Shepherd, 'I Am Very Glad and Cheered When I Hear the Flute', pp. 485–7.

superintendents saw their facilities as unsuitable for dealing with this class of patient.⁶⁶

Dundrum was designed as an institution for lunatics rather than criminals, with the inmates provided first and foremost with asylum facilities and care. Unlike Broadmoor, which imposed a harsher regime on inmates transferred from prison, 'once within the walls of the Central Asylum no distinction is made in regard of the inmates, every just indulgence being alike conceded to all', applying 'those general principles which are now happily established as the foundation of all treatment in cases of mental disease ... we have never recognised the merely legal distinction of their criminality'.⁶⁷ Dundrum also quickly became full, and by 1857 was declared 'practically nearly useless for the disposal of lunatic convicts', with prisoners being transferred too late to cure them. Instead, as Dundrum was unable to receive them, they were confined in Philipstown Prison, which housed invalid prisoners, under 'most unfavourable circumstances'.⁶⁸ Meanwhile, local prisons in Ireland tended to send insane prisoners to local asylums.

It was claimed in 1874 that while 25 per cent of Broadmoor's inmates had been transferred from a convict prison, at Dundrum the figure was just 10 per cent, a decline from 19 per cent in 1856.⁶⁹ The *BMJ* suggested in 1874 that 'lunatic convicts' were found to be troublesome at Dundrum, 'and as the inspectors have a special fondness for this asylum ... they admit as few and send back to prison as many of the convict class as they can'.⁷⁰ Dundrum also reported in the same year on the strains resulting from the custody of the convict class, as they required a higher proportion of attendants; 'their admission ... in some instances constitute an unpleasant and unprofitable addition to the ordinary inmates of the institution'.⁷¹ Yet diversions from Dundrum could end badly. In 1872 six prisoners were removed from Spike Island public works prison to the Central Lunatic Asylum, two of whom were

⁶⁶ Saunders, 'Institutionalised Offenders', p. 220.

⁶⁷ Report on the District, Criminal and Private Lunatic Asylums in Ireland (1857), Dundrum Central Criminal Asylum, p. 19; *ibid.* (1874), Central Asylum Dundrum, p. 104.

⁶⁸ Report of the Directors of Convict Prisons in Ireland (RDCPI), 1857 (1857–58) [2376], p. 10.

⁶⁹ Anon., 'Criminal Lunatics and Lunatic Convicts', *BMJ*, 2:705 (4 July 1874), 14–16, at p. 15; Report on the District, Criminal and Private Lunatic Asylums in Ireland (1857), Appendix 1, p. 71.

⁷⁰ Anon., 'Criminal Lunatics and Lunatic Convicts', p. 15.

⁷¹ Report on the District, Criminal and Private Lunatic Asylums in Ireland (1874), Central Asylum Dundrum, pp. 104–5.

subsequently sent back to Spike.⁷² In the same year, the Director of Spike Island expressed his regret at the murder of a convict by one of these men when they were employed on public works. Convict Mahoney had been confined in Dundrum but then declared sane.⁷³ Following the murder, Mahoney was retried, acquitted on the grounds of insanity and sent back to Dundrum. He was later declared sane, but would not be moved again: 'There is no doubt danger to be apprehended from the association of such a character with the inmates ... one, however, less than were he again to mix with ordinary convicts.'⁷⁴

Discourses of Guilt and Disease: Psychiatrists, Prison Doctors and Mediating Insanity

Embedded in the issue of where to accommodate criminal lunatics was the complex question of assessing lunacy itself, which built on a long history of negotiations in and around the courtroom between 'discourses of guilt and disease'.⁷⁵ This had produced tensions between psychiatry and the law, as the insanity defence became 'an important way for the alienists' claims to expertise and status to be ventured and tested'.⁷⁶ Judges questioned the ability of doctors to delve into and understand the minds of defendants, particularly when invoking pleas of temporary insanity or irresistible impulse. Medical witnesses, meanwhile, expressed frustration when judges and juries ignored psychiatric evidence.⁷⁷ Psychiatry in general was emerging as a more robust specialism, as the number of asylums expanded in the early and mid-nineteenth century and the volume of writing on medical psychology substantially increased. Disputes drawing on medical discourses and diagnoses to validate insanity, and thus non-responsibility for crimes, became common features of trial proceedings at this time, particularly with regard to serious crimes and capital offences. They were also mirrored in debates between

⁷² RDCPI, 1872 (1873) [C.731], Governor's Report, p. 20.

⁷³ Ibid., Director's Report, p. 19.

⁷⁴ Report on the District, Criminal and Private Lunatic Asylums in Ireland, 1873 (1873) [C.852], Central Asylum Dundrum, p. 15.

⁷⁵ Smith, *Trial by Medicine*, p. 34.

⁷⁶ Smith, 'The Boundary between Insanity and Criminal Responsibility', p. 366. See also note 11 for the rich literature on this subject.

⁷⁷ Smith, *Trial by Medicine*. For disputes concerning the insanity plea in cases of infanticide, see Hilary Marland, *Dangerous Motherhood: Insanity and Childbirth in Victorian Britain* (Houndmills: Palgrave Macmillan, 2004), ch. 6; Eigen, *Witnessing Insanity*, pp. 147–9; Watson, *Medicine and Justice*, ch. 4; Tony Ward, 'Legislating for Human Nature: Legal Responses to Infanticide, 1860–1938', in Mark Jackson (ed.), *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550–2000* (Aldershot: Ashgate, 2002), pp. 249–69.

magistrates and medical men in local courts in relation to lesser offences where the state of mind of the defendant was in doubt.⁷⁸

However, another set of tensions emerged during this period. As gaol surgeons appeared more frequently as court witnesses after the 1830s, this produced disputes between two sets of 'expert' medical witness, with 'the prison doctor ... clearly in the process of assuming the authority which was later to become a decisive factor in so many trials of the insane'.⁷⁹ Just as alienists saw their role as expert witnesses in criminal trials as a means of enhancing their status, so too did prison surgeons, at a time when there was a stepping up of emphasis on mental health as a major component of their work in prisons; through their courtroom interventions, prison doctors had the potential to divert mentally ill offenders away from the prison system. Yet, as Joel Eigen has demonstrated with regard to his analysis of Old Bailey trials in Victorian London, the term 'expert witness' was in itself something of a misnomer. While a number of psychiatrists, like Forbes Winslow, John Charles Bucknill and John Conolly, examined defendants and presented in court on numerous occasions and wrote extensively on criminal responsibility and insanity, other medical witnesses might provide testimony in just one or two cases over the course of their careers. Many of these witnesses would have had no particular knowledge of psychiatry, and much medical evidence continued to be based heavily on the accounts of lay witnesses.⁸⁰

According to even experienced medical witnesses, the problem of assessing prisoners whose mental condition was in doubt began pre-trial, with prisoners only being visited a couple of times by physicians for assessment before their court appearance. In cases taking many months to reach court, treatment would also be delayed with disastrous consequences.⁸¹ Additionally, the process 'pitted' doctors against each

⁷⁸ Cox, *Negotiating Insanity*, p. 103.

⁷⁹ Nigel Walker and Sarah McCabe, *Crime and Insanity in England, Volume Two: New Solutions and New Problems* (Edinburgh: Edinburgh University Press, 1973), p. 84.

⁸⁰ Eigen, *Witnessing Insanity*, especially ch. 5. See also Cox, *Negotiating Insanity*, pp. 118–19; Marland, *Dangerous Motherhood*, pp. 180–1. See also James Moran, 'The Signal and the Noise: The Historical Epidemiology of Insanity in Antebellum New Jersey', *History of Psychiatry*, 14:3 (2003), 281–301 and Catharine Coleborne, "'His Brain Was Wrong, His Mind Astray": Families and the Language of Insanity in New South Wales, Queensland and New Zealand 1800–1920', *Journal of Family History*, 31:1 (2006), 45–65. For overviews of the careers of Conolly and Bucknill, including their work in medical jurisprudence and as court witnesses, see Andrew Scull, Charlotte MacKenzie and Nicholas Herve, *Masters of Bedlam: The Transformation of the Mad-Doctoring Trade* (Princeton, NJ: Princeton University Press, 1996), chs 3 and 7.

⁸¹ See, for example, Bucknill, *Unsoundness of Mind*, pp. 145–6.

other in the courtroom, while the medical evidence often failed to provide good guidance for the jury. In Charles Hood's words,

A few hours, perhaps less, are all that is allotted, and he is hurried into the witness-box to state before a learned judge, an astute and adverse counsel, and a perplexed jury, the ground of the opinion he has formed, usually involving some of the more delicate questions of psychological science.⁸²

In response to the pressures experienced at Bethlem, Hood also advocated for a more speedy process for moving patients who were found to be no longer insane back into the criminal justice system.⁸³ Meanwhile, in 1851 Inspectors Francis White and John Nugent questioned the process of acquittal itself in Irish cases involving the insanity plea: 'If there are extenuating circumstances connected with the psychological condition of the accused, they are legitimate subjects to be considered in meting out the after punishment, but certainly not in the first instance for an unqualified acquittal.'⁸⁴

The term 'Criminal Lunatic' itself was also something of a misnomer, running against the principle of not guilty by reason of insanity, and its meaning continued to be debated throughout the second half of the century, complicating the issue of where to place criminals who were also mad.⁸⁵ In 1883 William Orange argued that it was impossible to be guilty of a crime and a lunatic at the same time, as the latter could not be held responsible for their criminal act. He added that 'The evils of sentencing persons who are really insane to penal servitude or imprisonment, are much graver than is commonly supposed':

If the punishment is to be carried out in its entirety it necessarily involves much suffering ... whilst if the sentence is not to be carried out thoroughly, but if the understanding is that it is to be modified in its severity, so as to suit the mental condition of the prisoner, it were surely better, in doubtful cases, not to pass sentence until after a satisfactory examination of the mental condition of the prisoner had been made ... every instance in which a prisoner is found, on his trial, to be insane acts as a reminder to the community that, little or much, it has failed in its duty in not having prevented the commission of the crime by placing the prisoner under proper care at an earlier date.⁸⁶

⁸² Hood, *Criminal Lunatics*, p. 17. ⁸³ *Ibid.*, pp. 10–12.

⁸⁴ Report on the District, Criminal and Private Lunatic Asylums in Ireland, 1851 (1851) [1387], Central Criminal Asylum, p. 11.

⁸⁵ Allderidge, 'Bethlem to Broadmoor', p. 51.

⁸⁶ W. Orange, 'Presidential Address, Delivered at the Annual Meeting of the Medico-Psychological Association, Held at the Royal College of Physicians, London, July 27th, 1883', *Journal of Mental Science*, 29:127 (Oct. 1883), 329–54, at pp. 347–8.

Orange went on to suggest that in an ideal society,

the class of criminal lunatics would disappear, because no-one would be sentenced to punishment without his mental state being ascertained before sentence, instead of, as now so generally happens, afterwards; and, furthermore, because persons known to be insane would then be placed under control before, and not, as now, after they had committed some alarming act of homicide or violence.⁸⁷

He recommended bolstering the process of assessment around the trial and that a prisoner charged with a crime and suspected to be insane should be examined by the prison medical officer, a local asylum superintendent, and additionally by a 'physician of standing', as soon after the crime had been committed as possible.⁸⁸

Prison doctors might dispute the verdicts of psychiatrists based on their observations of prisoners pre-trial, though in other instances they drew the same conclusions concerning the defendant's state of mind. The medical evidence 'intended to show the defendant as sane and responsible' was likely to rely less on deviant acts, but 'simply on an absence of signs of insanity while remanded in prison'.⁸⁹ Gilbert McMurdo, surgeon to Newgate Gaol in London, gave evidence in numerous Old Bailey trials between the 1830s and 1850s, making him the most frequent medical witness to testify at insanity trials over that period.⁹⁰ McMurdo emphasised that he saw many cases of lunacy and was able to closely observe prisoners suspected of being mentally disordered, having almost daily interactions with them.⁹¹ In 1854, he concurred with the opinion of Dr Forbes Winslow in the case of Hugh Pollard Willoughby, who was accused of wounding with intent to murder, that he was insane and suffering a 'horrible delusion'. In giving evidence McMurdo explained, 'since the day the prisoner was committed to Newgate I have continually seen and conversed with him – I happened to be in the prison immediately after he was taken there, and I saw him then – I am of opinion that he was then, and is now, of

⁸⁷ Ibid., p. 331; Anon., 'Plea of Insanity in Criminal Cases', *Journal of Mental Science*, 37:157 (Apr. 1891), 260–3, at p. 262.

⁸⁸ 'Anon.', 'Plea of Insanity in Criminal Cases', p. 262.

⁸⁹ Tony Ward, 'An Honourable Regime of Truth? Foucault, Psychiatry and English Criminal Justice', in Helen Johnston (ed.), *Punishment and Control in Historical Perspective* (Houndmills: Palgrave Macmillan, 2008), pp. 56–75, at p. 62.

⁹⁰ Eigen, *Witnessing Insanity*, p. 129.

⁹¹ Ibid.; *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 1 Aug. 2019). Gilbert McMurdo was referred to as M'Murdo in the Old Bailey proceedings. See also Joel Peter Eigen, "'I Answer As a Physician": Opinion as Fact in Pre-McNaughtan Insanity Trials', in Michael Clark and Catherine Crawford (eds), *Legal Medicine in History* (Cambridge: Cambridge University Press, 1994), pp. 167–99.

unsound mind.’ Willoughby was found not guilty and ordered to be detained.⁹²

One year later, however, McMurdo’s evidence was key in condemning Luigi Burinelli to death, following his Old Bailey trial for murder. There was a wealth of medical evidence in this case, and while it was agreed that Burinelli had suffered badly from internal piles, which had been treated in Middlesex Hospital, and was acknowledged to be in very poor spirits and melancholic following the death of his second wife in childbirth, McMurdo testified that under his observation at Newgate he had shown no symptoms of aberration of mind, but was suffering from hypochondria. John Conolly, along with other medical witnesses, disagreed, arguing that the defendant was of unsound mind and delusional. McMurdo, while he did ‘not profess to be what Dr. Conolly is, set apart to that part of the profession’, reaffirmed in giving his evidence his vast experience as prison surgeon:

I have had a great many persons, about whose state of mind inquiry has been made, or was made, under my care during my tenure of office, for a considerable time – I have been surgeon to the gaol of Newgate for twenty-five years, and I have had a great many under my care; some who have been of unsound mind, some who have been thought to be so.⁹³

Joel Eigen has argued that unmasking fakery was the primary goal of the prison surgeon.⁹⁴ However, beyond that, McMurdo appeared to be very concerned to assert his experience in detecting mental disorder based on daily observation and his lengthy prison career.

By the late nineteenth century the trial hearing had become a key interface where claims of insanity were disputed by prison doctors and psychiatrists working outside of prisons, and the medical press reported avidly on such proceedings. Such reports could be critical of prison surgeons’ testimony when this went against that of eminent alienists.⁹⁵ Tensions flared, for example, in a case tried in York in 1859, reported

⁹² *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 1 Aug. 2019), Oct. 1854, trial of HUGH POLLARD WILLOUGHBY (t18541023–1122).

⁹³ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, 1 Aug. 2019), Apr. 1855, trial of LUIGI BURINELLI (t18550409–464). The trial produced much commentary in medical journals, including ‘The Trial and Conviction of Luigi Buranelli for Murder’ Plea of Insanity’, *Asylum Journal*, 14 (2 July 1855), 209–13. (Burinelli was spelt in different ways in some accounts of his trial.)

⁹⁴ Eigen, ‘I Answer As a Physician’, p. 183.

⁹⁵ In 1877 the *Lancet* went so far as to claim that prison surgeons had few resources to draw on in assessing the mental condition of prisoners in an ordinary gaol, and that prison warders – with their day-to-day interactions with prisoners – might be declared more competent to judge such cases: Anon., ‘Insane or Lunatic’, *Lancet*, 110:2820 (15 Sept. 1877), 401–2. See also Joe Sim, *Medical Power in Prisons: The Prison Medical Service in England 1774–1989* (Milton Keynes and Philadelphia, PA: Open University Press, 1990), ch. 3.

across several issues of the *BMJ* and in the *Dublin Medical Press*, when Mr Anderson, surgeon of York Gaol, sided with the counsel for the prosecution who had advised the jury to reject the opinions of three eminent medical witnesses. The three, including Dr Forbes Winslow, claimed the defendant, James Atkinson, who was charged with murdering his sweetheart, was an obvious case of insanity and ‘an imbecile’ with the intelligence of an eight-year-old child. Anderson declared that he did not think those gentlemen were better able to give an opinion on questions of lunacy than himself.⁹⁶ In August 1884, in another widely reported trial taking place in Dublin, the dispute centred on whether James Ellis French was fit to stand. Several medical men, including Dr Eames, Medical Superintendent of Cork District Lunatic Asylum (labelled by the *Lancet* as the ‘only specialist’), claimed that he was not in a mental condition to plead and conduct his defence with due caution. Three other doctors, including Dr McDonnell, claimed there was nothing wrong with French physically or mentally, and that he was shamming.⁹⁷

While serving as medical officer at Mountjoy Prison, Dr Robert McDonnell provided a candid assessment of the difficulties involved in making such assessments:

There is not a medical officer of a lunatic asylum, or of a prison in this country, who will not admit that, in many cases, to discriminate with precision between wickedness and madness is a task too difficult as to be often absolutely impossible, and that, too, after months of close and careful daily observation.⁹⁸

He added that half of the medical witnesses knew something of the prisoner and nothing of insanity and half knew something of insanity but nothing of the prisoner.⁹⁹ He was not surprised that many persons of unsound mind were found in convict prisons. Nonetheless, while the judge and jury system could not assess such cases ‘with the delicacy of a chemist’s balance’, and medical witnesses dealt not in certainties but ‘probabilities’, he pointed out that grave errors had been made, as in the case of Burton, tried at Maidstone and executed for the horrific murder of a boy. In McDonnell’s view Burton was clearly a madman.¹⁰⁰ Burton had declared that his only motive was that he wanted to be executed, and

⁹⁶ Anon., ‘Criminal Responsibility of the Insane’, *Dublin Medical Press*, 41:1044 (Jan. 1859), 13; Anon., ‘Criminal Responsibility of the Insane’, *BMJ*, 2:104 (25 Dec. 1858), 1068; 1:105 (1 Jan. 1859), 17–18.

⁹⁷ Anon., ‘The Dublin Trials’, *Lancet*, 124:3182 (23 Aug. 1884), 347.

⁹⁸ Robert McDonnell, ‘Observations on the Case of Burton, and So-Called Moral Insanity in Criminal Cases’, *Journal of the Statistical and Social Inquiry Society of Ireland*, 3:25 (Dec. 1863), 447–56, at p. 450.

⁹⁹ *Ibid.* ¹⁰⁰ *Ibid.*, pp. 450, 454.

it was discovered that his mother was ‘a madwoman and his brother of weak intellect’.¹⁰¹ In this case it was a prison surgeon who had gone ‘a long way towards banishing the idea of the prisoner’s insanity from the minds of judge and jury’. ‘He stated that he had observed the prisoner ever since he had been placed in confinement, that he appeared sane, nor did he observe that he was under any delusion.’¹⁰²

Though psychiatrists working outside of prisons were widely consulted in trial proceedings, in effect it was prison doctors who had most contact with prisoners on remand, many of whom showed symptoms of insanity or were regarded as suicidal. Magistrates sent those suspected of insanity to the local gaol for assessment by prison surgeons and in Ireland prison or dispensary surgeons; the latter were often already familiar with the patient’s history.¹⁰³ In contrast to the ‘expert witness’ in court who had seen prisoners just once or twice, prison doctors were ‘schooled in multiple observations’.¹⁰⁴ It was particularly in remand prisons (including numerous local prisons in England and Ireland) that prison medical officers built up impressive levels of experience dealing with mentally ill offenders, assessing the state of their minds pre-trial, and taking care of prisoners who had a high risk of suicide.¹⁰⁵ Prison doctors employed in remand prisons were particularly likely to assert their expertise in assessing mental illness, at the same time underlining their heavy workload. At Clerkenwell Prison in London, the medical officers had extensive dealings with suspected cases of insanity and attempted suicides. In 1859 alone a total of 107 attempted suicides were reported, who were placed under close observation by Clerkenwell’s surgeon Henry Wakefield.¹⁰⁶ Cases of temporary insanity caused by drinking were frequent that year and additionally thirty cases of suspected insanity were sent from various London police courts, ‘calling the surgeon’s attention to the state of the Prisoners’ mind, and requiring Certificates of his opinion; this duty involves a serious responsibility’.¹⁰⁷ Many prisoners were moved to asylums before their trial or were acquitted on the grounds of insanity and then transferred to asylums. Clerkenwell’s prison surgeons worked closely with local asylum superintendents, including

¹⁰¹ *Ibid.*, pp. 447–8. ¹⁰² *Ibid.*, p. 454.

¹⁰³ Cox, *Negotiating Insanity*, ch. 4. As discussed in Chapter 3, in Ireland many prison surgeons held posts as dispensary doctors.

¹⁰⁴ Eigen, *Witnessing Insanity*, p. 130.

¹⁰⁵ See, for English remand prisons, Seán McConville, *English Local Prisons 1860–1900: Next Only to Death* (London and New York: Routledge, 1995), pp. 378–83.

¹⁰⁶ London Metropolitan Archives, MA/G/CLE/114-177/ Item no. 147, Return of the number of prisoners charged with attempting to commit suicide from 1847 to 1859.

¹⁰⁷ *Ibid.*

Charles Hood at Bethlem and William Sankey at Hanwell, to obtain further assessments on the mental state of prisoners and to organise removals. In February 1860, for example, Elizabeth Livermore was charged with unlawful assault and attempting to stab her victim with a knife. She was acquitted on the grounds of insanity and sent to Clerkenwell to be kept under strict custody, before being removed on the order of the Home Secretary to Colney Hatch Asylum.¹⁰⁸

II CRIMINAL OR LUNATIC? PRISONER OR PATIENT?: PLACES AND PRACTICES OF CONFINEMENT

Removals between Prisons and Asylums

Decisions concerning the state of mind of prisoners prompted removals back and forth between the prison and asylum, and preoccupied prison and asylum officers throughout the nineteenth century. Processes of removal between institutions were much more than administrative exercises, and a great deal was at stake in determining the placing of lunatics who had committed crimes in terms of the welfare of individual prisoners, institutional wellbeing and management, cost, intraprofessional relationships, the assertion of specialist knowledge and authority, and the very definition of criminal lunacy itself. The ambivalent position taken by asylum doctors has already been referred to, concerned as they were about the impact of mentally ill offenders in asylums, yet also critical of their retention in prisons. Prison doctors too were ambivalent. Along with asylum doctors, they shared a concern to remedy what was increasingly depicted as a disastrous situation for the prison system and the numerous mentally ill prisoners held within it, and, as Robert McDonnell indicated, were likely to find the state of mind of prisoners extremely difficult to assess. However, they were also keen to underline their growing knowledge and expertise, and ability to produce an accurate diagnosis. By the late nineteenth century, as shown in Chapter 3, not just those working in remand prisons, but prison medical officers more generally were expressing confidence about undertaking this work, and were spending a far greater proportion of their time dealing with mentally disordered offenders. In 1869 the Howard Association, expressing concern about ‘the *fact*’ that many victims of mental disease were exposed to ‘penal treatment’, quoted figures showing that one in nine prisoners was more or less insane at Perth Prison, while in 1870 Perth’s medical officer,

¹⁰⁸ *Ibid.*, MA/G/CLE/205–319 [Jan.–Dec. 1860]/Item nos 210, 212, 215, 218.

Dr James Bruce Thomson, estimated that 12 per cent of the Scottish prison population were 'mentally weak in different degrees', noting that similar rates were reported in English and Irish prisons.¹⁰⁹ Dr Charles P. Measor, late Deputy-Governor of Chatham Convict Prison, also claimed in 1869 that his 'experience of convicted criminals induces in me a strong conviction that the amount of mental disease actually existing among them is inadequately appreciated', while he was aware that as many as 5 per cent of inmates of an Irish convict prison were confined in separation under medical observation with a view to ascertaining their mental condition, 'quite exclusive of a large proportion who might be said to have possessed inferior degrees of irresponsibility'.¹¹⁰

Managing mentally disordered prisoners, as demonstrated in Chapter 3, was doubtless a significant part of all prison doctors' workloads, particularly as cases were retained in prison when officials were unable to decide – or agree – on their state of mind. If cases of mental disorder were missed at the trial and the prisoner sent to a prison rather than the asylum, this added to the responsibilities of overburdened prison medical officers as they attempted to assess and deal with mental illness in a punitive environment lacking in therapeutic resources. Medical officers were often slow to initiate transfers to asylums, because their heavy workload hindered this, and also as it indicated the failure of the institution to manage the mental health of its prisoners and the detrimental impact of prison regimes on their minds. These factors might vary depending on local circumstances and the type of prison involved, and the weighing up of the disruption such prisoners created against the trouble of moving them. Bucknill observed how,

In the new gaols for separate confinement a noisy lunatic proves such a nuisance, from the reverberation of his cries through the resonant structure of the building, that every effort is sure to be made to have him transmitted to an asylum without delay; but this evil is not felt in the old prisons, nor in the new ones with silent or melancholic patients.¹¹¹

The destinations of many insane prisoners were governed in the first place, not by prison or asylum doctors and administrators, but by the actions of local magistrates. Both the Commissioners in Lunacy and Inspectors complained that lunatics committing minor offences were sent by magistrates to prison, and their insanity ignored, or were passed

¹⁰⁹ Modern Records Centre (MRC), University of Warwick, Howard League Papers, MSS.16X/1/7, Annual Reports of the Howard Association, c. 1865–1901, 'Criminal Lunacy', 169–71, at p. 170; J.B. Thomson, 'The Hereditary Nature of Crime', *Journal of Mental Science*, 15:72 (Jan. 1870), 487–98, at p. 492.

¹¹⁰ MRC, MSS.16X/1/7, 'Criminal Lunacy', p. 170.

¹¹¹ Bucknill, *Unsoundness of Mind*, p. 146.

over to the Poor Law authorities, though it was suggested that there was some merit in the latter arrangement, as many such cases were regarded as 'ordinary lunatics' who had not been properly looked after and were rarely of the criminal class.¹¹² What came to be described as 'magisterial dumping of the insane' was largely prompted by cost considerations, as workhouses and asylums, unlike prisons, were supported by local rates, with maintenance costs in the workhouse being much lower than asylums.¹¹³ Meanwhile, the certification process for asylum admissions was expensive and time-consuming. In Ireland the Prison Inspectors' Report for 1868 described how circulars had been issued in 1807 and then again in 1868, enclosing forms for the committal of lunatics to asylums, yet it was found from returns and on inspections of gaols and bridewells that magistrates still committed insane persons to prison, 'thus, besides the injury inflicted on the individual, seriously interfering with the discipline of the gaols'.¹¹⁴

At the local level, a series of cases reported to the magistrates of the West Riding of Yorkshire in 1860 demonstrated how complex the dispersal of prisoners showing symptoms of mental disorder ended up being, involving transfers between prison, asylum and workhouse.¹¹⁵ In April 1860 James Jenkins, a blademaker, was committed to Wakefield Prison for four months for the theft of steel. His 'friends' reported that he had been leading an 'unsteady' life before he was sent to prison and had showed 'a strangeness of mind indicating insanity'. Once in prison the surgeon came to a similar conclusion. The prisoner's insanity was reported to the Secretary of State, and he was removed in August 1860 to the West Riding Lunatic Asylum.¹¹⁶ Inquiries into the dispersal of prisoners were also made at the end of their sentences. In May 1860 Robert South was removed to Wakefield House of Correction as a 'disorderly pauper'. At the end of his three-week sentence the prison surgeon, William Wood, reported that, while nothing had occurred during his imprisonment to warrant removal to the asylum, when he was sent on to Sheffield Workhouse the institution's medical officers

¹¹² Anon., 'Criminal Lunacy in 1877. Broadmoor Criminal Lunatic Asylum. Annual Report for the Year 1877. 32nd Report of Commissioners in Lunacy', *Journal of Mental Science*, 24:108 (Jan. 1879), 643–9, at p. 648.

¹¹³ McConville, *English Local Prisons*, p. 290, n. 44; see also Saunders, 'Magistrates and Madmen'.

¹¹⁴ RIGPI, 1868 (1868–69) [4205], p. xxviii.

¹¹⁵ The National Archives (TNA), MH 51/754, *Insane or Imbecile Prisoners: Duties of Magistrates, 1861. Cases Submitted by West Riding Justices to Mr Atherton 1861*. At this time, Wakefield Prison was acting as a local gaol as well as admitting government prisoners.

¹¹⁶ *Ibid.* (James Jenkins).

were warned to pay 'special attention to the state of his mind as his Conduct has been such as to create a strong suspicion that he is a Lunatic'. Robert South was transferred a few days later to the West Riding Asylum.¹¹⁷

A memo to the West Riding justices a year later explained the 'great inconvenience' resulting from the actions of local magistrates in committing persons charged with offences who were in a state of insanity or mental imbecility to the Wakefield House of Correction. Such persons, the memo complained, caused much trouble to the prison officers, interfered with the discipline of separate confinement, and later put the county to considerable expense and trouble in removing the individuals to an asylum, and obtaining an order of maintenance after establishing which parish was responsible for payment. They urged the magistrates 'where a person was manifestly an idiot or insane at the time of committing felony or indictable misdemeanours' to send them directly to a lunatic asylum.¹¹⁸ However, as Saunders has pointed out, magistrates were under considerable pressure to make rapid decisions, and the Home Office might have believed that magistrates were sending insane offenders to prison for careful observation by the prison doctor, which would result in a more informed decision about where to send such individuals than their own hasty diagnosis.¹¹⁹ Both Cox and Saunders have also argued that magistrates might be well informed on the subject of insanity, involved as they were in making arrangements for the medical examination of suspected lunatic prisoners, while many were also members of asylum visiting and management committees, and, as such, aware that local asylums were short of space, security and staff.¹²⁰

The advisability of moving criminals from prison once they were declared insane also divided opinion. Charles Hood proposed that if a criminal became insane after sentencing, 'he should be put into a lunatic ward connected with the infirmary of the prison in which he may be confined, and there treated by the officiating surgeon in the same way as if he were suffering from any other disease'. Though Hood suggested elsewhere that minor offenders who were insane might be sent directly to county asylums, he argued that 'the practice of sending insane prisoners from gaols to county asylums is, in every point of view, objectionable'.¹²¹

¹¹⁷ Ibid. (Robert South).

¹¹⁸ Ibid., Memo 11 March 1861, For Justices of WR of Yorkshire, Copy Case as to Committal of Persons to the House of Correction.

¹¹⁹ Saunders, 'Institutionalised Offenders', p. 244.

¹²⁰ Cox, *Negotiating Insanity*, pp. 102–3; Saunders, 'Institutionalised Offenders', pp. 235–6.

¹²¹ Hood, *Suggestions for the Future Provision of Criminal Lunatics*, p. 146.

Hood also observed that ‘the medical officers, connected with our public prisons, are men of undoubted professional skill and experience ... fully competent to deal with a disease which may, it is well known, by active treatment, be cut short in its early stages’.¹²² Such prisoners, he added, would be closely supervised by the Commissioners in Lunacy whose duties included visiting gaols where lunatics were held.¹²³

During an inquiry into the operation of Broadmoor Asylum in 1877, it was also suggested (albeit by means of a minority opinion) that convicts becoming insane after conviction might be better off in lunatic wards in prison, where they would have the possibility of employment, describing the atmosphere in prison as less ‘depressing and desponding’ and presenting more hope for the future than in an asylum.¹²⁴ The conditions for some of Broadmoor’s patients appear to have been woeful, with disruptive patients placed in seclusion and several, exceptional for their ‘dangerous violence’, held for many months in large cages. A number of these had attacked Broadmoor attendants, including W.T., admitted from Millbank Prison in 1867. Sentenced to fifteen years’ penal servitude, his conduct in Woking, Portsmouth and Dartmoor was described as ‘bad’, and he had escaped from Portsmouth Prison in 1865. W.T. had been kept in a strait waistcoat and hobbles for some time before admission to Broadmoor, and in January 1868 he attempted to attack the attendants and take their keys, then in September bit an attendant’s leg.¹²⁵

While many claimed expertise in dealing with mental illness, prison surgeons might have a very different perspective on the best place to confine such cases, particularly when prisoners were violent or for those working in poorly resourced local prisons. Surgeon Read, referring in 1862 to the confinement of lunatics in ordinary (local) prisons in Dublin, emphasised how the imprisonment of lunatic prisoners, including ‘the violent maniac, the feeble and the imbecile’, had been a heavy responsibility for him for the past twenty years:

The consequences are rendered apparent in sanguinary incidents, loss of life, and the most perilous operations of surgery. This blood-stained scene is a blot on humanity, as well as an extravagant impolicy; in fact, an institution for converting derangement into permanent insanity.... Every Board of Superintendence for

¹²² *Ibid.*, p. 149. ¹²³ *Ibid.*, pp. 149–50.

¹²⁴ Report from a Committee Appointed to Inquire into Certain Matters Relating to the Broadmoor Criminal Lunatic Asylum (1877) [C.1674], Minute of Dissent, F.J. Mouat, MD, pp. 29, 36.

¹²⁵ Copy of a Report Made by the Commissioners in Lunacy, on the 14th October 1868 upon Broadmoor Criminal Lunatic Asylum (1868–69) [244], pp. 2–3, 5, Appendix, Table (A), pp. 7–8.

many years has deprecated the principle of committing insane persons to prison, and they have made increasing representations of the violation of prison discipline consequent upon their confinement therein.¹²⁶

There were also resource implications. Over the year 1861 the number of lunatics confined in Richmond Bridewell alone rose from eighteen to thirty-four, making it necessary to employ an additional warder to supervise them.¹²⁷

In effect, by the second half of the century prisons, criminal lunatic asylums and public and district asylums were all housing large numbers of criminal lunatics. In England around 50 per cent of the total were accommodated in public asylums, ensuring that their medical officers had extensive (and often unwelcome) experience of dealing with this group. In 1863, 419 of the total of 877 criminal lunatics were held in custody in county or borough asylums. By 1880, when the total number of criminal lunatics and ex-criminal lunatics in England was 1,288, public asylums held 720 of them.¹²⁸ In Ireland the situation differed in a number of respects. Though there were continued complaints about the strains the mentally ill put on both prisons and asylums, the number of criminal lunatics was smaller, and by the 1880s most lunatic prisoners were being moved on to district asylums. In 1866 eight prisons were declared to be the 'most encumbered' with criminal lunatics, with 315 lunatics between them. However, it was suggested that two new asylums at Letterkenny and Castlebar would clear the gaols of most of their lunatics, and with further asylum expansion elsewhere, 'the prisons in Ireland will virtually cease to be as heretofore receptacles for the insane'.¹²⁹ In 1868 a total of 69 criminal lunatics were confined in Irish gaols. Of these, twenty-six were moved to Dundrum, twenty-nine to district asylums, five were discharged by the Lord Lieutenant to the charge of their friends, seven, largely committed as vagrants, were discharged by order of the magistrates, and three remained in gaol at the end of the year.¹³⁰ Of the 99 lunatics confined in Irish gaols in 1879, eighty-nine were moved to district asylums and ten were discharged by the Lord Lieutenant. This figure included fifty-three who were under sentence of imprisonment or transportation who became insane in gaol,

¹²⁶ Anon., 'The Board of Superintendence of the City of Dublin Prisons', *The Irish Times*, 16 Jan. 1862.

¹²⁷ *Ibid.* ¹²⁸ Commission on Criminal Lunacy (1882), Appendix A, pp. 109–11.

¹²⁹ Report on the District, Criminal and Private Lunatics Asylums in Ireland, 1866 (1866) [3721], Gaols, pp. 19–20.

¹³⁰ *Ibid.*, 1869 (1868–69) [4181], Gaols, pp. 32–3.

fifty-two of whom were moved to district asylums while one was discharged.¹³¹

After 1867 county and district asylums had to accept from either state asylums (Broadmoor and Dunderum) or convict prisons certified criminal lunatics whose sentences had expired and could only be detained thereafter as pauper lunatics. This must have been welcome in Broadmoor, which in 1865 had admitted 50 convicts from Chatham, 59 from Portsmouth and 64 from Portland, bringing the total number of lunatic convicts to 266, and in 1868 Broadmoor removed 134 patients whose sentences had terminated to county asylums.¹³² Lunatics, however, who had been retained in the prison system without medical certification could be released at the end of their sentences. In October and November 1874 two ‘dangerous lunatics’ were sent from Millbank Prison to the St George Union Workhouse. Shortly after, one, John Maloney, escaped and the other, Henry Balls, discharged himself. It was reported that neither while in the workhouse showed any symptoms of insanity.¹³³ The Lunacy Commissioners and Home Office expressed grave concerns about the discharges, underlining the unsuitability of workhouses for confining dangerous lunatics. Rather, the Lunacy Commissioners proposed that ‘they should with all possible dispatch be placed in a lunatic asylum’, and also questioned why the two men, as dangerous lunatics, were not sent directly to an asylum rather than a prison. The Broadmoor authorities and asylum superintendents, meanwhile, continued to object to the mixing of criminals with lunatics, while Du Cane and the Home Office were keen to retain the penal emphasis with regard to lunatic criminals, and in 1875 the opening of the lunatic wing at Woking appeared to resolve the issue. Male ‘prisoner lunatics’ were to be retained there, with fewer ‘indulgences’ than Broadmoor and outside the authority of the Lunacy Commissioners.¹³⁴

¹³¹ Ibid., 1880 (1880) [C.2621], Appendix D, Criminal Lunatics, pp. 108–10.

¹³² RDGP, 1865 (1866) [3732], p. 238; Copy of a Report Made by the Commissioners in Lunacy, upon Broadmoor Criminal Lunatic Asylum (1868–69), p. 2.

¹³³ TNA, HO 45/9525, Lunacy: Report on Accommodation at Broadmoor Asylum and Question of Removing Lunatic Convicts from Woking Prison to Broadmoor, 1874–87 (LRAB), 8. Discharge of Insane Convicts, 2 Dec. 1874.

¹³⁴ TNA, HO 45/9353/28292, Lunacy. Memos. Concerning Safe Custody of Lunatics at Broadmoor, 1872–78, Du Cane to Home Secretary, 19 Dec. 1873. Cited in Martin J. Wiener, *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830–1914* (Cambridge: Cambridge University Press, 1990), p. 316. See Laura Sellers, ‘Managing Convicts, Understanding Criminals: Medicine and the Development of English Convict Prisons, c. 1837–1886’ (unpublished University of Leeds PhD thesis, 2017), ch. 3 for more detail on the debates on the use of Woking as a place to confine lunatic prisoners.

In Ireland the 1875 Lunatic Asylums Act confirmed that lunatics removed from prison or from Dundrum to a district asylum were to be treated as 'ordinary patients' and charged to their local district, and were to be subsequently retained or discharged on the authority of the asylum governors.¹³⁵ Broadmoor's medical superintendent, William Orange, had suggested in 1870 that such a flow was vital to create space for insane convicts in the specialised criminal lunatic asylums who otherwise would be retained in prison 'not only to their own detriment, but also to the detriment of the sane prisoners'.¹³⁶ The 1877 Prison Acts authorised central government to take over the running of local prisons in England and Ireland in addition to their funding, but local ratepayers were to continue to support lunatics and criminal lunatics in asylums.¹³⁷ This provided a major incentive for magistrates to keep sending offenders suspected of lunacy to prison, with some 621 being removed to local prisons in England in 1883 on suspicion of insanity, which in most cases in the view of the Prison Commissioners 'was virtually certain'.¹³⁸ The prison authorities, they continued, were put in a particularly difficult position when medical officers reported prisoners to be insane but the magistrates declined to provide a certificate for removal to an asylum, 'and it is a question whether in such a case a prisoner should not simply be discharged'.¹³⁹ The Prison Commissioners and Inspectors in Ireland protested regularly about this kind of situation, arguing that prison was not a proper place for those whose insanity had been questioned, given the need for special experience and treatment, 'and it cannot be expected that such experience should be available in prisons, more particularly in the small prisons which form the large majority'.¹⁴⁰

In England the 1884 Criminal Lunatics Act bolstered the role of the Secretary of State in the certification and transfer of criminal lunatics from prisons to asylums.¹⁴¹ This was in response to mounting pressure from asylum doctors attempting to get rid of dangerous patients, as well

¹³⁵ 38&39 Vict., c.67, s.10, 12 (1875).

¹³⁶ Wellcome Library (WL), *Reports of the Superintendent and Chaplain of Broadmoor Criminal Lunatic Asylum, for the Year 1870* (1871), p. 5.

¹³⁷ In 1874 the Irish Treasury introduced a grant-in-aid of 4 shillings per week per asylum patient in Ireland to alleviate the burden on local ratepayers. See Cox, *Negotiating Insanity*, pp. 19–20. A similar arrangement was made in England in the mid-1870s. See Robert Ellis, 'The Asylum, the Poor Law, and a Reassessment of the Four-Shilling Grant: Admission to the County Asylums of Yorkshire in the Nineteenth Century', *Social History of Medicine*, 19:1 (2006), 55–71.

¹³⁸ Report of the Commissioners of Prisons, 1884 (1884) [C.4180], p. 7.

¹³⁹ *Ibid.*, p. 8.

¹⁴⁰ *Ibid.*, pp. 7–8. See also McConville, *English Local Prisons*, p. 290; Report of the General Prisons Board, Ireland, 1891–92 (1892) [C.6789], p. 19.

¹⁴¹ 47&48 Vict., c.64 (1884).

as local authorities wanting to be relieved of the burden of maintaining 'quasi-criminal' asylum inmates. It was also prompted by the Home Secretary Sir William Harcourt's concern about the lack of allowance within the criminal justice system for mentally incapable offenders and prisoners, and the 1884 Act extended provision to certify prisoners not just as lunatics, but as suffering from 'imbecility of mind' that made them unfit for penal discipline.¹⁴² This coincided with the stepped-up use and success of the insanity plea more generally, with *The Times* suggesting in 1882 that the notion was spreading that 'there must be something wrong in a man's mental organization before he could have committed a certain crime in certain circumstances'.¹⁴³ Harcourt transferred more prisoners than previous Home Secretaries to Broadmoor without trial, and under the 1884 Act all prisoners sentenced to death were to undergo medical examination 'to ensure that no lunatic was executed'.¹⁴⁴ The Act made the Prison Commissioners responsible for the maintenance of prisoners moved to lunatic asylums – prior to that they had only been liable for those for whom a place of settlement could not be ascertained or those committed with very short sentences – and also included provision for interventions in prison regulations on behalf of those suffering 'imbecility of mind', though in practice few prisoners were placed in this category.¹⁴⁵ The 1884 Act encouraged the removal of Broadmoor patients whose sentences had expired to asylums, with twelve transferred in 1885 to English county asylums and ten to Dundrum, for subsequent distribution to district asylums in Ireland.¹⁴⁶ However, it also provided for the retention of criminal lunatics in Broadmoor upon a medical officer's certification that they might be dangerous, care being taken to select for transfer those 'not likely to cause annoyance'.¹⁴⁷

With costs now borne centrally, magistrates continued to send suspected lunatics to prison for medical observation, and their numbers increased dramatically, from averages of 8.2 and 11.9 per 1,000 commitals between 1870 and 1882 to 18.2 per 1,000 between 1884 and 1889,

¹⁴² Wiener, *Reconstructing the Criminal*, p. 317; Leon Radzinowicz and Roger Hood, *History of English Criminal Law and Its Administration, Volume 5: The Emergence of Penal Policy* (London: Stevens, 1986), pp. 537–8.

¹⁴³ *The Times*, 12 Apr. 1882. Cited in Wiener, *Reconstructing the Criminal*, p. 275. See also Radzinowicz and Hood, *History of English Criminal Law*, p. 684.

¹⁴⁴ Wiener, *Reconstructing the Criminal*, p. 275. See also Walker, *Crime and Insanity in England, Volume One*, pp. 204–10, 228–9.

¹⁴⁵ Wiener, *Reconstructing the Criminal*, pp. 317–18; McConville, *English Local Prisons*, pp. 290–1. See also ch. 3 for changing attitudes to the weak-minded.

¹⁴⁶ WL, *Reports upon Broadmoor Criminal Lunatic Asylum, with Statistical Tables, for the Year 1885* (1887), Superintendent's Report, p. 5.

¹⁴⁷ *Ibid.*; Wiener, *Reconstructing the Criminal*, p. 320.

with the number for 1889 rising to 22.8.¹⁴⁸ In 1885 Harcourt complained that the common practice 'of using a prison as a place in which a supposed lunatic can be confined in order to ascertain his mental condition certainly calls for alteration', though it was claimed that charging a person with a crime was the only way to keep a person in custody before being 'certified'.¹⁴⁹ It was also regarded as crucial that the prison authorities took on the costs of supporting insane offenders in asylums, in order get rid of a class of prisoners 'who encumber the gaol & interfere with Discipline'.¹⁵⁰ In 1889 the Home Office issued instructions to magistrates to send mentally ill offenders directly to asylums, but this failed to stem the rise in committals to prison, and then subsequent removals to asylums. Between 1890 and 1895 out of a total of 765 convicted lunatics, 334 ended up being converted to pauper lunatics at the end of their sentences.¹⁵¹ Many mentally ill prisoners, meanwhile, continued to languish in remand prisons. In the year ending March 1893 some 88 cases of insanity were recorded in Holloway Prison, 72 of whom were remand prisoners and 'insane before they came in'.¹⁵² The practice was recognised as a good thing for prisoners and for the public, and difficult to curb, but 'a very inconvenient thing to the prisons'.¹⁵³

The experience for mentally ill prisoners themselves was doubt about the genuineness of their insanity, delays in transfers and, for many, movements back and forth between prison and asylum.¹⁵⁴ Prisoners' own accounts provide valuable, and almost invariably critical, evidence referring to delays in sending insane prisoners to asylums for treatment, and regarded the prison as wholly unsuitable for any form of treatment.

¹⁴⁸ Report of the Commissioners of Prisons, 1889 (1889) [C.5881] [C.5881-1], p. 7. McConville, *English Local Prisons*, p. 231 cites a figure of £4,000 per annum as the additional cost for maintaining these prisoners in asylums in England and Wales after 1884.

¹⁴⁹ TNA, HO 45/9640/A34434, Prisons and Prisoners (4) Other: Medical Examination of Prisoners Unfit for Prison Discipline with a View to Decreasing Number of Deaths in Prisons, 1884-89, 8. Harcourt to Du Cane, Removal of Sick Persons from Prisons, 1 Jan. 1885.

¹⁵⁰ *Ibid.*, 7. Minute on Removal of Persons from Prison, Liddell to Fowler and Du Cane, 16 Dec. 1884.

¹⁵¹ TNA, HO 45/9955/V10698, Lunacy: Prison Department Reports on Criminal Lunatics Not under Definite Sentence Whose Maintenance Is Chargeable to Prison Vote, 1888-96, 13. Return of the Number of Criminal Lunatics Sent to County and Borough Asylums during the years 1890 to 1895.

¹⁵² Report from the Departmental Committee on Prisons [Gladstone Committee] (1895) [C.7702] [C.7702-1], Evidence of Dr Walker, p. 131.

¹⁵³ *Ibid.*, Evidence of Dr Gover, p. 48.

¹⁵⁴ See ch. 3, for more details of the medical management of cases of lunacy and suspected lunacy.

These memoirs, for the most part condemning all aspects of prison discipline, highlighted the poor treatment by doctors of insane prisoners rather than instances of good practice, though occasionally prisoners were positive about their medical care and the prison doctors. One *One Who Has Endured It* described the doctor's visit in Dartmoor as a 'brutal farce', while Susan Fletcher commented that the doctor offered friendly and professional care at Westminster Prison and was as good to her as the prison regulations allowed.¹⁵⁵ Typically the memoirs referred to the inadequate handling of cases of mental breakdown as those afflicted were moved to the punishment cells following displays of violence or infractions of the prison rules, or to the infirmary or padded cell for long periods of observation, pointing out that it was often fellow prisoners rather than the prison medical officers who called attention to cases of insanity. One memoir described the case of a fifteen-year-old boy accused of shamming and found insensible on several occasions. He was treated with blisters to the nape of his neck and a mustard plaster, followed by the stomach pump. Back in his cell, he was found covered in blood, having cut his leg with a broken medicine bottle. He had then eaten the rest of the bottle. Though the doctor confirmed that boy 'was not in his right mind', he was kept in the prison hospital until he supposedly recovered.¹⁵⁶ Another young man described as 'soft' was left in a semi-dark cell without anything to employ his mind. After three weeks 'he took to simply moaning like some dumb beast in mortal agony, and then after another week or so he became perfectly quiet and used to lie day after day stretched on the floor in a half stupefied condition'. He remained in this state for a month until the doctor decided that the boy was insane: 'the necessary papers were signed, and the unfortunate youth transferred to the county lunatic asylum to live at the expense of the ratepayers for the rest of his life'.¹⁵⁷ Florence Maybrick recollected how many female prisoners developed symptoms of insanity over many months or years, adding to the 'ghastliness' of the prison experience and having a harrowing impact on other inmates:

She is kept in the infirmary with the other patients for three months. If she does not recover her reason within that period, she is certified by three doctors as insane and then removed to the criminal lunatic asylum. In the mean time the peace and rest of the other sick persons in the infirmary are disturbed by her

¹⁵⁵ *One Who Has Endured It, Five Years of Penal Servitude* (London: Richard Bentley & Son, 1878), p. 96; Susan Willis Fletcher, *Twelve Months in an English Prison* (Boston, MA: Lee and Shephard; New York: Charles T. Dillingham, 1884), p. 408.

¹⁵⁶ *One Who Has Tried Them, Her Majesty's Prisons: Their Effects and Defects*, vols 1 and 2 (London: Sampson Low, Marsten, Searle & Rivington, 1881), vol. 2, pp. 127–9.

¹⁵⁷ *Ibid.*, pp. 252, 254–5.

ravings, and their feelings wrought upon by the daily sight of a demented fellow creature.¹⁵⁸

Examples taken from individual convict and local prisons illuminate the day-to-day negotiations and processes involved in removing prisoners to asylums, which were more complex and less clear cut than the legislation would indicate, involving delays and disputes between prison and asylum officers about the destination of prisoners, or uncertainly concerning their mental state. Catherine Murray, described as a 'prostitute', was imprisoned in Mountjoy Prison after she was found guilty of larceny in 1878, following several previous convictions for being drunk and disorderly, and was moved several times between Mountjoy and Dundrum Asylum. During a spell in Mountjoy between March and October 1881 she was reported to be unwell, unfit for strict cellular confinement, badly behaved and violent, showing symptoms of unsoundness of mind and insanity. Murray was removed once again to Dundrum in April 1882.¹⁵⁹ Convicted of murder and sentenced to penal servitude for life, Denis Flanagan was taken from Kilkenny Prison to Mountjoy in December 1887. Two months later he was transferred to Dundrum after attempting suicide. Kilkenny's Governor reported that Flanagan had a severe head wound and, though he spoke rationally, 'from his general conduct and other circumstances I believe him to be suffering from suicidal mania and have no doubt that he will repeat the attempt on his own life at the first opportunity'.¹⁶⁰ Other removals took longer, though it was unclear in many cases precisely when the prisoner was first suspected of suffering mental disorder. Thomas Kearney, sentenced to five years for wounding, spent eighteen months in Belfast Prison, before being removed to Dundrum; Patrick Sheridan, serving five years for robbery with violence, was moved from Mountjoy to Dundrum over two years after he was committed, having been 'under observation while mental state worsened'.¹⁶¹

In her study of criminal lunacy in Warwickshire, Janet Saunders noted how 'not only offenders with the less spectacular or obvious mental

¹⁵⁸ Florence Elizabeth Maybrick, *Mrs. Maybrick's Own Story: My Fifteen Lost Years* (New York and London: Funk & Wagnalls, 1905), pp. 82, 177–8. For prisoners' accounts of mental illness, see Hilary Marland, "'Close Confinement Tells Very Much upon a Man": Prison Memoirs, Insanity and the Late Nineteenth- and Early Twentieth-Century Prison', *Journal of the History of Medicine and Allied Sciences*, 74:3 (2019), 267–91.

¹⁵⁹ National Archives Ireland (NAI), General Prisons Board (GPB)/PEN/3/8, Catherine Murray.

¹⁶⁰ *Ibid.*, GPB/PEN/3/58, Denis Flanagan.

¹⁶¹ *Ibid.*, GPB/PEN/3/30, Thomas Kearney; GPB/PEN/3/34, Patrick Sheridan.

disorders, but also fairly severely disordered “lunatics” and the obviously mentally deficient were being sent to prison’.¹⁶² It was then the onset of spectacular or violent behaviour that was likely to prompt transfers of these prisoners, even though this kind of behaviour might be dealt with for lengthy periods before certification was turned to as a last resort.¹⁶³ One man, serving eighteen months for burglary, was sent to the asylum towards the end of his sentence after sixteen months in prison. He had displayed strange behaviour and had been depressed, but it was the onset of excitement and then violence that finally prompted his removal.¹⁶⁴ One case committed to Mountjoy Prison in 1875 attracted the attention of a Commission into Dundrum’s management, that, among other issues, was investigating the use of inappropriate restraints.¹⁶⁵ Christina Foster, imprisoned for arson, became insane and was transferred to Dundrum in July of that year, where, after violent outbursts, she was placed in a specially made refractory dress. This subdued her violent outbursts and she was moved back to Mountjoy a year later. In October 1876 she was readmitted to Dundrum, and, after a period of quiet marked by depression, in February 1877 Christina again became violent. She was repeatedly placed in seclusion in the restraining dress, before she was finally removed to Belfast Lunatic Asylum in April 1880, presumably on the expiration of her sentence.¹⁶⁶

Liverpool Borough Prison has a particularly rich collection of records that, together with local asylum archives, reveal complex histories of conviction, imprisonment and institutional confinement, as well as the importance of locale in a setting shaped by mass migration from Ireland to a port city experiencing in turn prosperity and severe economic downturns and extreme poverty.¹⁶⁷ Despite the insistence of alienists and advocates of specialised asylum treatment that prisons were inappropriate places for the care and treatment of the insane, these prisoner patients were often unwelcome in asylums, and in the Lancashire asylums the problem was also one of scale. Already in 1854 the Committee of Visitors at Lancaster Asylum despaired at the ‘rapid influx of admissions’, including many vagrant lunatics, via the port of Liverpool, that were filling up Lancashire’s asylums with chronic and

¹⁶² Saunders, ‘Institutionalised Offenders’, p. 233. ¹⁶³ *Ibid.* ¹⁶⁴ *Ibid.*, p. 234.

¹⁶⁵ TNA, T 1.13216, Lunacy Commission: Dundrum Criminal Lunatic Asylum Dublin, Report upon Dundrum Lunatic Asylum (printed), n.d. (stamped by Treasury, 20 Feb. 1882).

¹⁶⁶ *Ibid.*, pp. 5–6.

¹⁶⁷ See also, for the harm caused to prisoners by delayed removals and the harsh regime at Liverpool Prison, Catherine Cox and Hilary Marland, “Unfit for Reform or Punishment”: Mental Disorder and Discipline in Liverpool Borough Prison in the Late Nineteenth Century’, *Social History*, 44:2 (2019), 173–201.

incurable cases. They also regretted the lack of a separate asylum for criminal lunatics: 'the inconvenience and evils of their confinement and association with the ordinary inmates of our Asylums, are still suffered to exist'.¹⁶⁸ By 1862 Lancaster Asylum held twenty-four criminal patients though the asylum superintendent, John Broadhurst, insisted that only four or five of these were suitable for removal to the criminal lunatic asylum then about to open at Broadmoor.¹⁶⁹

Irish patients were perceived as a particular problem, associated as they were with violence, drink, vagrancy, disease, prostitution and high levels of crime as they circulated between prisons and lunatic asylums across England and Ireland, accounting for a large proportion of the inmates of English prisons and asylums, especially in port cities and the northern counties. By 1859 around 14 per cent of prisoners in England were Irish-born.¹⁷⁰ In 1875 it was claimed that 13 per cent of the 446 Irish admissions to Prestwich Asylum were sent from the police courts and gaols of the district.¹⁷¹ The large number of Roman Catholic prisoners at Portsmouth's public works prison prompted Frederick Richard Falkiner, Recorder of Dublin from 1876 to 1905, to conclude they were 'probably Irishmen'.¹⁷² In the late 1870s the Wakefield Justices estimated that about 16 per cent of their prisoners were Irish-born, and at least an equal number were English-born of Irish parentage.¹⁷³ Of the 6,707 Roman Catholic prisoners committed to Liverpool Prison in 1868, 53 per cent were born in Ireland. A small number were repatriated, as in 1874 when an Irish male prisoner, sent back from Rainhill Asylum to Liverpool Prison before the expiration of his sentence, was subsequently transferred to Mountjoy Prison in Dublin, but for the most part Irish prisoner patients remained in Lancashire's asylums and prisons.¹⁷⁴

¹⁶⁸ WL, *Reports of the County Lunatic Asylums at Lancaster, Prestwich, & Rainhill*, Jan. 1854. *Report of the Committee of Visitors of the County Lunatic Asylum at Lancaster, Jan. 4th 1854*, p. 10.

¹⁶⁹ Report of the Commissioners in Lunacy, 1862 (1862) [417], p. 131.

¹⁷⁰ *Judicial Statistics*, 1859 (1860) [2692], p. xxv.

¹⁷¹ Liverpool Record Office (LRO), M614 RAI/40/2/3, *Annual Reports of the Lancashire Asylums, 1875-78*. Prestwich Annual Report, 1875, p. 66. See also J.K. Walton, M. Blinkhorn, C. Pooley, D. Tidswell and M.J. Winstanley, 'Crime, Migration and Social Change in North-West England and the Basque Country, c. 1870-1930', *British Journal of Criminology*, 39:1 (1999), 90-112.

¹⁷² F.R. Falkiner, 'Our Habitual Criminals', *Journal of the Statistical and Social Inquiry Society of Ireland*, 8:60 (Aug. 1882), 317-30, at p. 323.

¹⁷³ J. Horsfall Turner, *The Annals of Wakefield House of Correction* (Bingley: privately printed, 1904), pp. 246, 252.

¹⁷⁴ LRO, 347 MAG 1/2/2, Proceedings of the Meetings of the Liverpool Justices of the Peace, Minutes 1870-78, Report of Governor, 24 Jan. 1874; Report on the District, Criminal and Private Lunatic Asylums in Ireland, 1886 (1886) [C.4811], Central Asylum at Dundrum, p. 123. Jeremiah O'Connor's passage to Ireland was paid by the Liverpool Discharged Prisoners' Aid Society: LRO, 347 MAG 1/3/3, Proceedings of

Drawing on the minutes of Liverpool Prison's visiting committee, annual reports and asylum casebooks, the transfers of individuals moving between the prison, Liverpool's Rainhill Asylum and other local asylums can be traced.¹⁷⁵ One such individual was Mary Leonard, who was found guilty of burglary at the Liverpool Assizes in December 1868 and sentenced to seven years' penal servitude. After removal to Millbank Prison in London (presumably to confirm her mental state), she was taken to Broadmoor in 1873, and in 1876 at the expiration of her sentence transferred to Rainhill.¹⁷⁶ She was noted to be noisy, incoherent and excitable, and had hallucinations of sight and hearing, believing 'that people enter her room at night and stab her, that poison is put into her food. Says her room is set on fire at night.... Has delusions of an exotic kind and uses obscene language.' Mary Leonard died in Rainhill almost three years after her admission.¹⁷⁷ Irishwoman Catherine Nolan's misdemeanors were noted in the Liverpool prison records in April 1896, when she assaulted a warder and damaged twelve panes of glass. She was handcuffed and put on a no. 1 punishment diet for seven days.¹⁷⁸ A month later she was admitted to Rainhill Asylum, where she was noted to be dangerous to others and intemperate. 'She is subject to outbreaks of violence which usually occur at the menstrual period. At times she is violent, destructive, & abusive.'¹⁷⁹ A year later Catherine Nolan was still described as dangerously excitable, delusional and prone to attack those around her: 'Cannot be left a moment alone owing to her violence.' She continued in this state until October 1898, when her death was recorded as a result of tuberculosis of the lungs and intestines.¹⁸⁰ As the number of admissions to Rainhill increased in the late nineteenth century, its Superintendent, Dr Rogers, despaired at the continual presence of the criminal class 'as they not only give much trouble and interfere with the discipline, but their presence and intercourse have also an injurious and demoralizing effect on the younger patients'.¹⁸¹

the Meetings of the Visiting Committee, Liverpool Borough Gaol, Apr. 1878–June 1897, 28 Oct. 1891, p. 191.

¹⁷⁵ Cox and Marland, 'Unfit for Reform or Punishment'.

¹⁷⁶ LRO, M614 RAI/8/7, Rainhill Asylum Female Casebook, Oct. 1873–July 1878, p. 175.

¹⁷⁷ Ibid.

¹⁷⁸ LRO, 347 MAG 1/3/3, Proceedings of the Meetings of the Visiting Committee, Liverpool Borough Gaol, Apr. 1878–June 1897, 29 Mar. 1896, p. 387.

¹⁷⁹ LRO, M614 RAI/8/18, Rainhill Asylum Female Casebook, Oct. 1895–July 1897, p. 85.

¹⁸⁰ Ibid.

¹⁸¹ LRO, M614 RAI/40/2/4, *Reports of the County Lunatic Asylums at Rainhill, Lancaster, Prestwich and Whittingham, 1879–82*, Report of the Medical Superintendent, Rainhill, 1879, p. 17.

Liverpool Prison, as shown in Chapter 3, was notable for its very high proportion of female inmates, many of whom were Irish and likely to be described as turbulent, prone to drunkenness, violent and as prostitutes.¹⁸² In 1868, 69 per cent of Irish-born prisoners were women.¹⁸³ Frances Holden, a thirty-three-year-old single Irish woman, committed on numerous occasions to Liverpool Prison on charges of prostitution, was transferred to Rainhill in July 1873. She claimed that she had been in prison thirty-three times and that ‘her child was an officer’ there. On admission to the asylum, she was described as suffering from mania and that she was ‘at one time ... very excited and at others more depressed’. Her behaviour was described as delusional, volatile and destructive. In October 1876 Holden was removed ‘unimproved’ to Lancaster Asylum.¹⁸⁴ In the case of both male and female prisoners, it was largely violent and disruptive behaviour – rather than a precise medical diagnosis – that prompted removal from the prison to asylum. It was also the case that many of these prisoners became permanent residents at Rainhill, which created long-term problems in terms of the institution’s management, resources and ability to admit new cases.

As penal policy in England and Ireland shifted away from reforming and redeeming prisoners towards punishing and deterring repeat offenders in the 1860s and 1870s, prison medical officers were even more likely to transfer troublesome and violent prisoners, typically those with protracted prison careers, characterised by recommittals to prison and repeated breaches of prison discipline and punishments. They were also keen to rid themselves of inmates who were diseased and sick, and prisoners suffering general paralysis of the insane (GPI) were particularly liable to removal. Notably difficult patients, they required extra staff and nursing care and had high mortality rates.¹⁸⁵ These cases were unwelcome in prisons and in asylums, and the movement of prisoners with GPI from Liverpool Gaol to Rainhill and other local asylums reflected what was observed to be a remarkable rise in the disease in Lancashire asylums in the latter decades of the century.¹⁸⁶ By 1896 most of Rainhill’s deaths

¹⁸² Cox and Marland, ‘Unfit for Reform or Punishment’.

¹⁸³ LRO, H365.32 BOR, *Reports of the Governor, Chaplain, Prison Minister and Surgeon, of the Liverpool Borough Prison, Presented to the Court of Gaol Sessions, Holden on the 28th Day of October, 1869, Prison Minister’s Report*, p. 19.

¹⁸⁴ LRO, M614 RAI/8/6, Rainhill Asylum Female Casebook, Jan. 1870–Oct. 1873, p. 278.

¹⁸⁵ WL, *Reports of the County Lunatic Asylums at Lancaster, Prestwich, and Rainhill, 1855, Report of Superintendent, Rainhill Asylum*, p. 88.

¹⁸⁶ For more detail on the status of Irish asylum admissions, see Catherine Cox, Hilary Marland and Sarah York, ‘Emaciated, Exhausted and Excited: The Bodies and Minds of the Irish in Nineteenth-Century Lancashire Asylums’, *Journal of Social History*, 46:2 (2012), 500–24, especially p. 516 for cases of GPI.

were cases of GPI, and in that year eighty-nine men and nineteen women in the asylum were afflicted with the condition.¹⁸⁷ These included John Murphy, a thirty-five-year-old married Irish labourer, transferred from Liverpool Prison to Rainhill in December 1896. Typifying cases of general paralysis, he was reported to be ‘very noisy and violent and has marked grandiose delusions’, and he remained ‘in a very restless and exalted state’. Murphy died in Rainhill in January 1899.¹⁸⁸

Catherine O’Brien, a thirty-year-old Irish woman imprisoned for stealing, was described by her husband on her removal to Rainhill in April 1876 as addicted to drink. Her husband also commented that, while his wife was prone to take things, she did not intend to steal them, a likely indication of one of the commonly reported symptoms of GPI, a tendency to hoard other people’s belongings.¹⁸⁹ Dr Henry Maudsley commented critically in 1875 on six ‘well-marked’ cases of GPI admitted to the West Riding Asylum, ‘*after having undergone the whole or the greater part of their punishment in gaol for larceny*’, that might easily have been diagnosed at the time of imprisonment ‘by any medical man who had even the most rudimentary knowledge of the symptoms of general paralysis’.¹⁹⁰ In one case a barrister recognised the disease during the trial, ‘yet this unfortunate man remained in gaol for five months before being sent to the asylum; he underwent the punishment of a criminal for five months after a hopeless disease of the brain had begun to make its fatal progress’.¹⁹¹ The prisoner had become violent and excited in prison, was put into a strait jacket and confined in a padded room during the last three weeks of his imprisonment, after which he was sent to the asylum.¹⁹² While the Lunacy Commissioners expressed concern that such cases were being removed to asylums given the burden they placed

¹⁸⁷ Report of the Commissioners in Lunacy, 1896 (1896) [304], p. 278.

¹⁸⁸ LRO, M614 RAI/11/17, Rainhill Asylum Male Casebook, June 1896–Nov. 1897, p. 105.

¹⁸⁹ LRO, M614 RAI/8/7, Rainhill Asylum Female Casebook, Oct. 1873–July 1878, p. 194. See also Gayle Davis, *The Cruel Madness of Love: Sex, Syphilis and Psychiatry in Scotland, 1880–1930* (Amsterdam and New York: Rodopi, 2008), p. 90.

¹⁹⁰ Henry Maudsley, ‘Stealing as a Symptom of General Paralysis’, *Lancet*, 106:2724 (13 Nov. 1875), 693–5, at p. 694 (emphasis in original). Maudsley was a preeminent medico-psychological specialist of the late nineteenth century, his views shaped by positivism and degeneracy theory: see Scull, MacKenzie and Hervey, *Masters of Bedlam*, ch. 8.

¹⁹¹ *Ibid.* Maudsley was citing evidence from J. Wilkie Burman, ‘Some Further Cases of General Paralytics Committed to Prison for Larceny’, *Journal of Mental Science*, 20:90 (July 1874), 246–54. See also J. Wilkie Burman, ‘On the Separate Care and Special Medical Treatment of the Acute and Curable Cases in Asylums’, *Journal of Mental Science*, 25:111 (Oct. 1879), 315–25; 25:112 (Jan. 1880), 468–80.

¹⁹² Maudsley, ‘Stealing as a Symptom of General Paralysis’, p. 694.

on the institutions, they were also frustrated at the lack of care in diagnosing them in the first place.

The frequency with which General Paralytics are convicted of larceny and similar offences, and their mental state unrecognised even after a considerable stay in gaol, and who are brought to the asylum either as criminal lunatic or as ordinary cases, some time after their discharge from gaol, is very discreditable to the administration of the law, and deserves more attention, with a view to remedy, than it has received.¹⁹³

Prison medical officers' diagnosis of 'real' or 'genuine' insanity in these and other cases would typically follow prolonged periods of disruptive behaviour by inmates, and the destruction of prison property, suggesting that removal to an asylum was prompted by concerns about management rather than careful judgement, detailed diagnosis or consideration of the prisoners' best interests, bringing into question the claims of prison medical officers to be making decisions on the basis of their expertise in psychiatry. Prison doctors' descriptions of such patients at the point of removal refer to prisoners experiencing 'delusions', or to the 'irritability' or 'excitability' that prompted destructive behaviour; they were less likely to come up with a clear diagnosis or to use labels current in psychiatric practice outside of prisons.¹⁹⁴ This kind of approach magnified the assertions of asylum doctors that prisoners were better off being moved and treated in the asylum by experts in mental disorder, but also confirmed their anxieties about the removal of particularly disruptive patients and their impact on routine and management.

By the late nineteenth century, many asylums in England and Ireland were overcrowded and overstretched, struggling to accept new patients and to effectively maintain regimes of moral management that were based on regularity and order, enhanced diet, work therapy and occupation.¹⁹⁵ They were reluctant to take in insane criminals who were regarded as troublesome, likely to contribute to high mortality rates

¹⁹³ Anon., 'Criminal Lunacy in 1877', p. 648.

¹⁹⁴ David Nicolson, while medical officer at Woking Prison, described these episodes as 'breaking out' though the term was not used at Liverpool: David Nicolson, 'The Morbid Psychology of Criminals', *Journal of Mental Science*, 19:87 (Oct. 1873), 398–409, at p. 402. See ch. 3 for the unique taxonomy and labelling produced in nineteenth-century prisons, and chs 2 and 5 for instances of breaking out. See also Rachel Bennett, "'Bad for the Health of the Body, Worse for the Health of the Mind": Female Responses to Imprisonment in England, 1853–1869', *Social History of Medicine*, 34:2 (2021), 532–52.

¹⁹⁵ There is an expansive literature on moral management. See e.g. Scull, *The Most Solitary of Afflictions*, ch. 4. For a comparison of the therapeutic regimes at Broadmoor criminal asylum for different classes of inmate, see Shepherd, 'I Am Very Glad and Cheered When I Hear the Flute'.

and who would be a poor and potentially alarming influence on other patients. In 1887, referring to the practice of reclassifying criminal lunatics as pauper patients at the end of their sentences, the Commissioners in Lunacy described how those removed to county asylums

are a far more dangerous class than those to whom the term is now legally applicable, and if I might devise a name for them, I would call them 'Lunatic Criminals'; implying that they were 'criminals' first and 'lunatics' afterwards. It is by this class that murderous assaults are generally committed.¹⁹⁶

In addition to concerns about the type of illnesses they brought into the institution and the high mortality rates, there was also the risk of escape.¹⁹⁷ The Superintendent of Somerset County Lunatic Asylum, Dr Charles Medicott, spoke of the 'contaminating effect' of such admissions, arguing that in most cases 'it is not fair to saddle a criminal who has become insane on our ordinary pauper lunatics', as 'the anxiety and responsibility is endless with a class like that, and the restraint that ought to be exercised in their cases is utterly incompatible with the liberty we wish to give to others where we know that there is a possibility of restoration to reason'.¹⁹⁸

Turf Wars and Claims of Expertise between Prisons and Asylums

Such challenges to the maintenance of order and institutional wellbeing blighted prisons and asylums throughout the second half of the nineteenth century. At the same time both asylum doctors and prison medical officers continued to assert their unique authority and ability to treat mentally ill offenders, though prison doctors' claims were more likely to be based on ability to recognise, diagnose and manage insanity rather than to treat it. Aside from what appeared to be at times intractable legal and practical issues in reaching decisions on the accommodation of 'prisoner patients', in particular instances discussions on where to place the lunatic prisoner evolved into disputes between prison doctors and the prison commissioners and asylum doctors and lunacy commissioners and inspectors. Prison doctors were lambasted in some of these high-profile cases, for their lack of expertise, knowledge and judgement, as

¹⁹⁶ LRO, M614 RAI/40/2/6, *Reports of the County Lunatic Asylums at Lancaster, Rainhill, Prestwich, and Whittingham, 1887–90, Rainhill Asylum Annual Report, 1887, Commissioners in Lunacy Report*, p. 115.

¹⁹⁷ Report of the Commissioners in Lunacy, 1862, p. 133. For criminal patients' escapes from asylums, see ch. 5.

¹⁹⁸ Commission on Criminal Lunacy (1882), Evidence of Charles W.C.M. Medicott, pp. 72, 1237, 1246.

well as their resistance to transferring cases, and it was argued that prisoners whose mental and physical condition had worsened in prison would have fared better had they been removed to the specialist care available in the asylum.

Many cases were brought to light where mentally disturbed offenders had languished in prison for lengthy periods, as well as of removals of prisoners to asylums who were described as being in a terrible state of mental and physical health, suffering serious abrasions and other injuries, malnourished and in a filthy condition.¹⁹⁹ In 1846 – in the midst of the Famine – the report of Ballinasloe District Lunatic Asylum complained of the terrible condition of the ‘poor creatures’ transferred from different prisons in the province, ‘in a most wretched and deplorable state, with broken down constitutions, and labouring under cachectic disease’. In one week alone, three were admitted in a dying state, including a twelve-year-old child, ‘labouring under dementia, epilepsy, and dysentery’. Prisoners were often conveyed in open vehicles, exposed to ‘the inclemency of the weather, as well as the gaze of the populace’, tied down with ropes or even chains.²⁰⁰ Prison doctors were still being described in the press in 1867 as not being ‘conversant with mental diseases’, leaving the quiet lunatic to ‘mope in hopeless loneliness’; if turbulent ‘he rages in his cell becoming more incurable every hour’.²⁰¹ The Irish Prison Inspectors continued to detail the appalling state of many such prisoners held in city and county gaols in their annual reports, such as the ‘idiotic’ male prisoner discovered in Kilmainham in December 1875, crouched in a corner of his cell, dirty and ‘howling like a wild beast’. The man, who was declared ‘most unfit for penal treatment in a gaol’, had been sentenced to two months’ hard labour for stealing but was incapable of any work. He had been regularly admitted to Loughlinstown Union Workhouse, ‘and it is to be regretted that he cannot be compelled to remain in it or some other asylum, as the criminal prosecution of someone in his state is not

¹⁹⁹ NAI, Government Prison Office (GPO)/Letter Books (LB), Vol. 15, Jan. 1856–Dec. 1856, C.R. Knight to Local Inspector, Spike Island, 19 Jan. 1856; *ibid.*, Walter Crofton to the Inspectors of Lunatic Asylums, 26 Jan. 1856; NAI, GPB/Minute Books (MB)/Vol. 3, Nov. 1883–Dec. 1886, 22 Jan. 1885, p. 187.

²⁰⁰ Report on the District, Local and Private Lunatic Asylums in Ireland, 1846 (1847), Ballinasloe District Lunatic Asylum, p. 37. Cachexia is a wasting disorder associated with extreme weight loss and muscle wastage. Dementia during this period denoted a chronic, incurable form of insanity with little expectation of improvement, rather than a disorder specifically related to ageing. See German Berrios and Roy Porter (eds), *A History of Clinical Psychiatry: The Origin and History of Psychiatric Disorders* (London and New Brunswick, NJ: Athlone, 1995), ch. 2; Emily Andrews, ‘Senility before Alzheimer: Old Age in British Psychiatry, c. 1835–1912’ (unpublished University of Warwick PhD thesis, 2014).

²⁰¹ *The Irish Times*, 12 July 1867.

attended with advantage'.²⁰² In 1885 a complaint was made by the Office of the Inspector of Lunatic Asylums about a prisoner who had been removed from Castlebar Prison; 'as to Insane prisoner Wm. [?Connot] having had serious abrasions on wrists when received in Dundrum Asylum'. The Lunacy Inspector was requested in future to bring such complaints to their notice and Dundrum's medical officer, Dr O'Brien, instructed to deal with the alleged injury.²⁰³

In many instances, prison officers were accused of causing severe harm or the deaths of insane prisoners, as in a case reported by John Charles Bucknill of an epileptic young man twice imprisoned in the borough gaol owing to his uncontrollable violence. 'I do not know on what principle he was committed to gaol, instead of at once being sent to an asylum. After thirty months' residence he died in a fit.'²⁰⁴ Nicholas Lawless was committed as a dangerous lunatic to Harold's Cross Prison, south of Dublin, in 1863, at which point the prison surgeon, Dr Ireland, examined Lawless and pronounced him to be mad.²⁰⁵ After a few months, Lawless's family were informed that he had died. While the cause of death was reported as 'softening of the brain', it appeared that Lawless had died as a result of a 'fearful scalding' when taking a bath. *The Irish Times* criticised the prison for withholding evidence and more generally the practice of committing lunatics declared dangerous to prison.

In a jail there is no provision for the curative treatment of the lunatic; he cannot be isolated from the society of criminals, reckless, it may be, and cruel. The warders are jailers, not attendants upon lunatics; the governor is the ruler of a prison, not the experienced superintendent of an asylum for the insane. No supervision, of the constant and careful kind required for the management of a man devoid of reason, can be exercised in a jail. The very structure of a jail building is unfitted for the safe keeping of lunatics.²⁰⁶

The case of Catherine Kelly centred less on her handling by prison officers than on the lack of judgement concerning the timing of her removal. In March 1888 Kelly was brought from Tullamore Prison, King's County to Maryborough District Lunatic Asylum, Queen's County, where she died four days later. Medical Superintendent Dr Hatchell claimed that she had been moved to the asylum in a dying state and that there were marks and bruises on her body. On this occasion the

²⁰² RIGPI, 1875 (1876) [1497.1], Part II, Appendix, Separate Report on the County and City Gaols and Bridewells, p. 254.

²⁰³ NAI, GPB/MB/Vol. 3, 22 Jan. 1885, p. 187.

²⁰⁴ Bucknill, *An Inquiry into the Proper Classification and Treatment of Criminal Lunatics*, Appendix, Case XI.

²⁰⁵ *The Irish Times*, 21 Mar. 1864. ²⁰⁶ *Ibid.*

criticism came from the prison rather than lunacy authorities. At the subsequent inquest, the medical member of the General Prisons Board, Dr George P. O'Farrell, concluded that Kelly died of 'extreme exhaustion' and that the prison 'doctor [Dr James Ridley] showed want of judgement in allowing a woman [in such a weak condition] to be removed 18 miles by road'. While Ridley was not accused of wilful neglect, he was criticised by O'Farrell for failing to transfer Kelly to the asylum immediately on reaching a diagnosis of insanity as 'a few hours often make the greatest difference between safety & danger in the removal of Lunatics'.²⁰⁷

Revelations and debates about these cases took place against the backdrop of a much broader set of concerns about the high death rates of prisoners in England and Ireland; many prisoners received into custody diseased, exhausted or in a state of insanity died shortly after committal. In 1885 the Prison Commissioners alerted Home Secretary Harcourt to the fact that many prisoners were committed to prison in a 'moribund condition or suffering from serious disease', suggesting that many cases were dying in prison whose condition would have been detected had they been medically examined at their committal.²⁰⁸ Under Secretary to the Home Office Sir Adolphus Liddell observed that the prison was a place of penal discipline and not 'the proper scene for a Death-bed, and ought not to be converted into a Hospital for Incurables'.²⁰⁹ Concerned about the number of prisoners suffering from feeble health or serious illness, Harcourt demanded more rigorous medical examinations in prison and insisted that, once identified, such cases should be moved to a workhouse or infirmary as appropriate.²¹⁰ In fact, deaths in local prisons declined significantly between the 1860s and 1880s, but still included many cases admitted in an exhausted or dying condition alongside large numbers of lunatic prisoners.²¹¹

²⁰⁷ NAI, GPB/Incoming Correspondence (CORR)/1888/Item no. 3881, Correspondence relating to inquest on Catherine Kelly, Mar.–Apr. 1888. Dr James Ridley committed suicide in July 1888 during the inquest into the death of the nationalist campaigner John Mandeville, who had been released from Tullamore Prison before Christmas 1887. His family and supporters claimed his treatment in prison had caused his death. See Beverly A. Smith, 'Irish Prison Doctors – Men in the Middle, 1865–90', *Medical History*, 26:4 (1982), 371–94. O'Farrell was appointed Inspector of Lunacy in 1890, see Cox, *Negotiating Insanity*, p. 51.

²⁰⁸ TNA, HO 45/9640/A34434, Prisons and Prisoners (4), 6. Letter Liddell to the Chairman of Quarter Sessions, 23 March 1885. See also McConville, *English Local Prisons*, p. 291.

²⁰⁹ TNA, HO 45/9640/A34434, Prisons and Prisoners (4), 7. Minute on Removal of Persons from Prison, Liddell to Fowler and Du Cane, 16 Dec. 1884.

²¹⁰ Wiener, *Reconstructing the Criminal*, pp. 318–19.

²¹¹ Report of the Commissioners of Prisons, 1889 (1889) [C.5881], pp. 54, 6. See ch. 3, for conditions in English and Irish prisons.

In England and Ireland, often extensive official investigations were conducted into the deaths of prisoners, which highlighted disputes between prison and asylum officers concerning the actions that had been taken and causes of death. The case of Ferdinand Parker, alias Shortlander, investigated by the Home Office in 1885, centred on the issue of the timing of his removal to an asylum after he had begun to refuse food.²¹² Parker had been admitted to hospital in Shepton Mallet Prison in May 1885, on account of his weakness after he declined to eat, declaring the food to be poisoned. By this time the prison surgeon concluded that he was too ill to remove. Though his insanity was said to have commenced on 19 May, he was not certified insane until 5 June. On 11 June he was moved to Somerset and Bath Lunatic Asylum. Examined by the asylum medical officer, Parker was declared to be suffering from mania, was very thin and wasted, and his body scratched and abraded, from what were said to be self-inflicted wounds. He died later that evening after two heart attacks, and the inquest concluded that his death was due to a weak heart and prolonged insufficiency of food. The prison doctors explained that they had been reluctant to force-feed Parker because he had a weak heart, and moreover at times he had taken food.²¹³ The Commissioners in Lunacy, however, were convinced that he should have been force-fed, adding that

It is the everyday experience of the Commissioners in Lunacy that insane persons who refuse food may be, by proper means, compelled to take sufficient nourishment to keep up their bodily strength till the violence of this phase of insanity has passed.... They see nothing in the circumstance of the present case to have made such a result impossible.²¹⁴

The Medical Inspector of Prisons, Dr Gover, responded that Parker could not have been safely fed by force, stating that the responsible medical officer in charge 'was the best judge'. 'To such an argument it would be quite open to Dr Hyatt [the prison doctor] to reply that the prisoner's heart was not in a condition to bear the strain of forcible feeding, and that but for the attempt made in the asylum he might possibly now be alive.'²¹⁵

²¹² TNA, HO 144/469/X6313. Lunacy: Removal to Asylum of Prisoners Certified Insane 1885.

²¹³ Ibid., Warrant of Removal to Asylums under CLA 1884, 10 June 1885; Letter from Somerset and Bath Lunatic Asylum, 15 June 1885 to Commissioners in Lunacy, re Ferdinand Espin Parker alias Shortlander; Letter from Commissioners in Lunacy to Under Secretary of State, 8 July 1885.

²¹⁴ Ibid., Letter from Office of Commissioners in Lunacy to the under Sec of State for the Home Dept., 27 Aug. 1885 (emphasis in original).

²¹⁵ Ibid., Copy Memorandum by Dr Gover, Medical Inspector on Ferdinand Parker's Case (received HO, 13 Oct. 1886). Prisons, however, were prepared to resort to force-feeding, as illuminated in ch. 3.

Occasionally these cases were more widely publicised, drawing public attention to the failures of the prison system, as in December 1897 when the *Manchester Evening News* reported a 'scandal' at Strangeways Prison involving Edward Cox, an insane prisoner whose ribs had been broken while he was being restrained.²¹⁶ Cox had arrived at Prestwich Asylum with severe injuries, but, while the asylum doctors claimed that eight of his ribs had been broken, the officers at Strangeways asserted that all due care had been exercised by the prison medical officers and that 'only one or two ribs' were fractured. The resulting Home Office inquiry revealed that the prisoner had been admitted to Strangeways in April 1897, and the day before his sentence expired on 9 October he became violently insane, assaulting the prison's senior medical officer, Dr Edwards.²¹⁷ There was a struggle with five prison officers to move Cox to a padded cell, when the injuries occurred. The discovery of the injuries prompted an extensive investigation into the case with allegations that the prison authorities had withheld relevant information on Cox's mental and physical condition from the Visiting Committee and the certifying magistrate. The Prison Medical Inspector, Dr Smalley, who was asked to examine Cox, criticised the asylum doctors, claiming that they had exaggerated the extent of the injuries. The Chairman of the Prison Visiting Committee, however, insisted that 'his [Smalley's] evidence ought not to outweigh the impartial evidence of the Asylum Surgeons who made careful independent assessments'.²¹⁸ It was agreed by all parties that Cox suffered from delusions and was insane. While it was concluded by the Home Office that no unnecessary violence was used against Cox, the prison was criticised for its poor standards of medical care and delays in examining the prisoner.²¹⁹

William Tallack of the Howard Association highlighted the case in a letter to *The Times* in January 1898, reminding readers there had been a similar occurrence in Strangeways eight years previously, when a prisoner had died of injuries that included a fractured breastbone and a number of broken ribs. That case had never been resolved, and Tallack made a strong argument for full disclosure in the public interest in the

²¹⁶ *Manchester Evening News*, 13 Dec. 1897.

²¹⁷ TNA, HO 114/513/X66658. Lunacy: Edward Cox. Injuries to Insane Prisoner Inquiry, 1897–98; *ibid.*/10 To the RH Sir Matthew White Ridley, MP, Principal Secretary of State (HO received 20 Dec. 1897).

²¹⁸ *Ibid.*/3, Copy of Report by Dr Smalley ([Prison] Medical Inspector) dated 15/9/97; *ibid.*/2, HM Prison, Manchester to Secretary of State, 18 Nov. 1897 (received HO 20 Nov. 1897).

²¹⁹ *Ibid.*/14, Letter Whitehall, 21 Jan. 1898, to R.A. Armitage, Chairman of Visiting Committee of HM Prison, Manchester.

case of Cox as ‘a check to the occasional cruelty of warders’ and for the protection of prisoners.²²⁰

Conclusion

While Dr David Nicolson and a few other individuals served long careers that crossed between prisons and asylums, typically moving from posts as assistant medical officer in an asylum to the prison service, in July 1896 the *Journal of Mental Science* asserted: ‘Too long have the alienist and the criminologist worked apart.’²²¹ Responding to the findings of the Gladstone Report of 1895, it was suggested that this distinction in their spheres of labour was ‘quite unnatural’. Both our prison colleagues ‘and ourselves’ had been remiss, it was concluded, in failing to forge common bases for study and collaboration across institutions of confinement.²²² Yet a few years later, Dr David Nicolson himself affirmed that ‘Many medical men, including some asylum attendants, who are in every way admirable in their ordinary lunacy work, find themselves not quite at home in the investigation of criminal cases,’ given that the methods of examination were often quite different.²²³

Assertions of expertise – which occasionally flared up in hostile exchanges – took place against the backdrop of prison services still facing the pressures of large numbers of lunatic prisoners. This resulted in part from magistrates’ persistence in directing such cases to prison, though the increase was also likely to have resulted from prison medical officers’ growing willingness to record prisoners as mentally disordered or unfit. Medical Inspector Dr Robert Gover explained how ‘In former times

²²⁰ William Tallack, ‘Prison Inquiries: To the Editor of the Times’, *The Times*, 3 Jan. 1898; William Tallack, ‘The Case of Prisoner Gatcliff: To the Editor of the Times’, *The Times*, 26 Dec. 1889; ‘The Alleged Manslaughter in Strangeways Gaol’, *Manchester Guardian*, 27 Dec. 1889. Similar cases had also long been reported in asylums, and Dr Rogers at Rainhill defended his attendants from accusations of foul play in 1870, claiming that patients suffering from broken ribs were often suffering from GPI, who typically were physically weak yet intensely irritating to other patients, leading to quarrels and skirmishes: Occasional Notes, ‘Broken Ribs and Asylum Attendants’, *Journal of Mental Science*, 16:74 (July 1870), 253–5. See Jennifer Wallis, *Investigating the Body in the Victorian Asylum: Doctors, Patients, and Practices* (Cham: Palgrave Macmillan, 2017), ‘Bone’, for the wider debate on the softening of ribs in cases of GPI.

²²¹ Anon., ‘Crime and Insanity’, *Journal of Mental Science*, 42:78 (July 1896), 602–4, at p. 602. Nicolson was prison medical officer in a number of convict prisons as well as a serving a long stint as Broadmoor’s superintendent (1886–96). Dr John Baker worked at Broadmoor before moving to prison posts at Portsmouth and Pentonville.

²²² Ibid.

²²³ David Nicolson, ‘Can the Reproachful Differences of Medical Opinion in Lunacy Cases be Obviated?’, *BMJ*, 2:2020 (16 Sept. 1899), 699–702, at p. 702.

I have no doubt that many prisoners who were insane were dealt with as if they were sane more than now,' with prison medical officers more willing to send insane prisoners on to the asylum in their own interests.²²⁴ In 1893 Gover noted that the number of lunatics proportional to the prison population was larger than any year on record, with eighty-one admissions to local prisons during the year.²²⁵ These ranged from prisoners on very short sentences to those sentenced to ten years' penal servitude, who were recognised to be insane at or shortly after their reception in prison. Most were quickly certified as insane and moved to asylums. 'All were unfit for prison discipline, and many must have been unable to understand why they were placed upon their trial, or the meaning of any of the legal proceedings taken. The insanity was very obvious in most cases.'²²⁶ The Commissioners' Reports also revealed the persistent messiness of dealing with such cases. Of the eleven cases reported in Liverpool Prison in 1893, three were removed to Rainhill Asylum, one to Whittingham Asylum, one was discharged into the care of friends and the rest taken to local workhouses.²²⁷

The continued admission of the mentally disordered into prisons took place at a time where there was mounting concern about both the high numbers of criminal lunatics more broadly and the rise in lunacy in the population as a whole in England and even more so in Ireland.²²⁸ While the alarming rise in the asylum population of Ireland was widely commented on, the Irish General Prisons Board still referred in 1892 to the 'objectionable and illegal practice prevailing throughout the country, of committing lunatics to gaol, instead of sending them directly to asylums'.²²⁹ A year later the number of asylum transfers had increased to 92: of these, 72 had been found insane on reception, five were imbecile

²²⁴ Gladstone Committee (1895), Evidence of Dr Gover, p. 48.

²²⁵ Report of the Commissioners of Prisons, 1893 (1893–94) [C.7197] Part 1, Notes by the Medical Inspector, R.M. Gover, p. 44. See also Wiener, *Reconstructing the Criminal*, pp. 320–1.

²²⁶ Report of the Commissioners of Prisons, 1893, p. 44. ²²⁷ *Ibid.*, pp. 44, 83–6.

²²⁸ In 1874 high numbers of criminal lunatics were reported in Broadmoor with 631 patients, while county asylums housed 93; the total, including a handful in private asylums, was 731: Report of the Commissioners in Lunacy, 1894 (1894) [172], p. 1. For anxieties concerning the rise in lunacy around 1900, see E. Fuller Torrey and Judy Miller, *The Invisible Plague: The Rise of Mental Illness from 1750 to the Present* (New Brunswick, NJ and London: Rutgers University Press, 2002) and, out of many publications in both lay and medical journals, see, for example, Thomas Drapes, 'Is Insanity Increasing?', *Fortnightly Review*, 60:358 (Oct. 1896), 483–93; Thomas Drapes, 'On the Alleged Increase of Insanity in Ireland', *Journal of Mental Science*, 40:171 (Oct. 1894), 519–48; Daniel Hack Tuke, 'Alleged Increase in Insanity', *Journal of Mental Science*, 40:169 (Apr. 1894), 219–34; Daniel Hack Tuke, 'Increase of Insanity in Ireland', *Journal of Mental Science*, 40:171 (Oct. 1894), 549–61.

²²⁹ RGPBI, 1891–92 (1892) [C.6789], p. 19.

or weak-minded and three 'doubtful'.²³⁰ Limerick alone had transferred thirteen male prisoners and six female to asylums, most of whom were insane when committed. Many such prisoners were suffering from dementia or described as imbeciles, and had been imprisoned with short sentences for begging or vagrancy.²³¹

Despite the claims of prison doctors, expertise in psychiatry in the context of criminal justice was still often equated with psychiatrists working outside of prisons. In Ireland it was largely lunacy inspectors and asylum superintendents, including Dr Conolly Norman, Medical Superintendent of Richmond Asylum and Dr Moloney of Swift's Hospital (St Patrick's), who were responsible for examining prisoners suspected of being mentally ill. In 1886 the Lunacy Commissioners, as requested by the Secretary of State, compiled a list of persons residing near each English prison who were fitted for the role of examining persons charged with capital offences reported to be of unsound mind or in whose case the defence of insanity was likely to be advanced. The list was largely composed of asylum superintendents. Dr Orange and Dr Gover had been relieved of their duties in this regard, Orange owing to his poor health, Gover because he was over-committed; Du Cane also argued that Gover's appointment was incompatible with his role as Medical Inspector of Prisons. Dr Henry Bastian, formerly an Assistant Superintendent at Broadmoor, was appointed to deal with cases in the metropolitan area, with a list of reserves including two eminent psychiatrists, Dr George Fielding Blandford and Dr Henry Maudsley, along with Dr Edgar Sheppard, retired Medical Superintendent of Colney Hatch Asylum, for a hefty fee of five guineas for a day's examination or for providing evidence.²³²

By the late nineteenth century many asylum doctors and some doctors working in the prison service itself argued that prison medical officers needed to be exposed to a period of training in lunacy outside of the prison, in order to deal with those prisoners who required special care. While such views, which were also strongly voiced in evidence given to the Gladstone Committee in 1895, can be construed as pointing to the continuing inadequacy of prison medical officers in dealing with mental disorder, they could also represent recognition of the reality of their roles and ambition to have their increasing experience and knowledge of the field enhanced and given more authority. 'That candidates for medical

²³⁰ RGPBI, 1892–93 (1893–94) [C.7174], p. 8. ²³¹ *Ibid.*, p. 9.

²³² TNA, HO 45/9632/A26128: Lunacy: Salaries of Drs. Gover and Orange. Arrangements and Fees for Examinations of Prisoners on Capital Charge, as to Insanity, 1883–86.

appointments should be required to show that they have given special attention to lunacy' also indicated that their heavy workload in this area of practice was being acknowledged.²³³ The Medical Superintendent of Wakefield Asylum recommended that prison medical officers should spend six months attached to a large county asylum, as 'the difficulties of diagnosis are very great'. He also argued that the number of medical officers should be doubled in London's receiving prisons, given the huge workload that often necessitated (over)rapid diagnosis.²³⁴ By the 1890s, David Nicolson was advocating asylum training and secondments for prison medical officers, at the same time suggesting that while prison doctors could enhance their skill sets, asylum doctors might be uncomfortable with criminal cases.²³⁵ Nicolson went on to chair a committee of inquiry in Ireland in 1905 examining the issue of 'borderland' cases transferred between prisons and asylums, and it was recommended that candidates for appointment as medical officer in convict prisons be required to produce testimony of special experience among the insane in asylums.²³⁶

During the latter part of the nineteenth century there was growing concern that while 'sane criminals' were finding their way into the criminal lunatic asylums of Broadmoor and Dundrum, as well as other asylums, the sanity of many of those imprisoned for their crimes was also being called into question. The Gladstone Report concluded with a memorandum 'Insanity in Prisons' that, while denying that the prison system produced mental breakdown, concluded that the number of cases of insanity had greatly increased since the prison system had been centralised twenty years previously. The Medical Inspector of the Prisons Board claimed that the practice of sending insane persons to prison contributed to this increase, while the Commissioners in Lunacy argued that many individuals were only dealt with as lunatics after they had committed an offence and thus found their way into prison, while more cases of insanity were actually being identified in prison.²³⁷ Prison administrators and prison doctors were increasingly reproached for their failure 'to realise how slender and impalpable is the border-line between

²³³ Anon., 'Crime and Insanity', p. 602.

²³⁴ Gladstone Committee (1895), Evidence of Dr Bevan Lewis, p. 306.

²³⁵ Ibid., Evidence of Dr David Nicolson, p. 312; Nicolson, 'Can the Reproachful Differences', p. 702.

²³⁶ NAI, Chief Secretary's Office Registered Papers/1905/12904, *Report on the Committee of Inquiry into certain Doubtful Cases of Insanity amongst Convicts and Person Detained*, 1905, pp. 10, 16.

²³⁷ Notes and News: 'Report of the Departmental Committee on Prisons, 1895', *Journal of Mental Science*, 42:178 (July 1896), 666–7.

crime and insanity ... the proper inmates of an asylum are too frequently treated with the penal discipline of a prison'.²³⁸ The Report, however, at a point where medical men – working in prison and outside of it – were gaining in professional authority and experience in dealing with criminal offenders, finally opened up the possibility of cooperation between the asylum and prison, 'which cannot but make for a better understanding of the sources and relationships of crime and insanity'.²³⁹

²³⁸ J.J. Pitcairn, 'The Detection of Insanity in Prison', *Journal of Mental Science*, 43:180 (Jan. 1897), 58–63, at p. 58.

²³⁹ Anon., 'Crime and Insanity', p. 602.