

THE MADHOUSE DIVORCE: THE EFFECT OF VICTORIAN PROPERTY, LUNACY AND DIVORCE LAWS AND THEIR PORTRAYAL IN POPULAR CULTURE

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INTRODUCTION

In the nineteenth century the trinity of property, lunacy and divorce laws operated inter-connectedly and conspired with male-defined notions of insanity to provide an alternative for husbands who could not divorce their wives: a “madhouse divorce”. Victorian property laws made it attractive for men to marry because everything a woman owned became her husband’s property at marriage.¹ Once married, a man who acquired a fortune also acquired a wife, of whom he sometimes wished to be rid. However, the law did not allow divorce except in very specific cases, and marital discord or unhappiness did not qualify. The development of lunacy laws in the late eighteenth century offered a solution for husbands. Before the *Madhouse Act* (1774),² no laws governed the process of committing a wife to a madhouse. However, by the nineteenth century, for the first time in English history, medicine examined the mind and the law regulated the madhouse. While the purpose of the laws was to ensure that committal to a madhouse was appropriate, the effect was to legitimize the “madhouse divorce”. Lunacy laws distinguished between the propertied and unpropertied, making it far easier to commit the latter. As a result, the industry of insanity emerged. The madhouse became the asylum, and its keepers were no longer matrons but medical men. Men dominated the operation of the asylum and they also defined lunacy - often as that which was female.

The effect of the laws was to protect the men who committed their wives rather than protecting wives from committal. This irony was not lost on the public. Popular literature abounded with criticism of misuse of the lunacy laws, which grew harsher as the century went on.³ While Charlotte Brontë’s *Jane Eyre* in 1847

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¹ That is to say, it was attractive for a man to marry a wealthy woman. The corollary of husbands becoming the owners of their wives’ property was that they would also become responsible for their debts, should their wives have accrued any before marriage.

² *Madhouse Act*, 1774, (UK) 14 Geo III c 48.

³ In popular literature the laws are indicted by Mary Wollstonecraft in *Maria; or, The Wrongs of Woman* (1798), Charlotte Brontë in *Jane Eyre* (1847), Wilkie Collins in *The Woman in White* (1859-60) and Charles Reade in *Hard Cash* (1863).

provides the archetypal husband who shuffles his wife out of sight because of her insanity and resumes life as a bachelor, Charles Reade offers a direct attack on the laws and madhouse system in *Hard Cash* in 1863. Brontë illustrates the motive, Reade the means. Outside of fiction, the press was critical of the laws and the injustice that resulted from them.⁴ One of the most publicized cases was Georgina Weldon's escape from the mad doctors who, under instruction from her husband, tried to commit her.⁵ Subsequent to the passing of the *Married Women's Property Act* (1882), Weldon took a number of cases to the courts and to the press, demonstrating the failure of the lunacy laws.⁶ Weldon's exposure of the abuse of the lunacy laws influenced both the public and the law. In the wake of public censure, these laws underwent a complete reform in 1890, creating a system that effectively ended the madhouse divorce.

Property, Divorce and Lunacy Laws in Victorian England

Under Victorian property law a man could acquire a fortune as easily as saying "I will," offering a great incentive for men to marry. The legal fiction of coverture merged husband and wife into a single married being, represented by the husband. In the words of William Blackstone,

By marriage the very being or legal existence of a woman is suspended, or at least it is incorporated or consolidated into that of the husband, under whose wing, protection and cover she performs everything, and she is therefore called in our law *feme covert* ... and her condition during marriage is called *coverture*.⁷

In part, the law was based on the notion that the husband would protect his wife.

⁴ See P McCandless, "Liberty and Lunacy: The Victorians and Wrongful Confinement" in A Scull, ed, *Madhouses, Mad-Doctors and Madmen: The Social History of Psychiatry in the Victorian Era* (Pennsylvania: UP, 1981).

⁵ Louisa Lowe, whose case was also well-publicized, was not as lucky as Weldon whom she assisted in her escape. Lowe was confined to an asylum in 1870 by her husband on the basis of her belief in spiritualism. She gained release in late 1871 and became an advocate for legal reform, writing a number of pamphlets and ultimately a book on the issue: "Report of a Case Heard in Queen's Bench, November 22nd, 1872 - Quis Custodiet Ipsos Custodes?" (1872/3), "Gagging in Madhouses, as Practised by Government Servants, in a Letter to the People" (1872/3), "How an Old Woman Obtained Passive Writing and the Outcome Thereof" (1872/3) and *The Bastilles of England, or The Lunacy Laws at Work* which are all reproduced in R Porter, H Nicholson and B Bennett, eds, *Women, Madness and Spiritualism* (London: Routledge, 2003). Lowe attempted to prosecute the Lunacy Commissioners on the ground that she remained in the asylum even after they knew her to be sane, but was not successful. She also began the Lunacy Law Reform Association.

⁶ See the list of actions provided by B Thompson in his biography *The Disastrous Mrs. Weldon* (Doubleday: New York, 2000) at 285-6.

⁷ W Blackstone, *Commentaries on the Laws of England* (1765), (Chicago: UP, 1979) at 1:430.

Therefore, the law entrusted the husband with the care of his wife, subsuming the wife's legal existence during her marriage. A married woman could neither own property nor bring an action. As a result, a married woman was at the mercy of her husband in almost every legal regard.⁸ Thus, the marriage contract was often a better bargain for the husband than his wife.

Once married, there was little possibility for escape. Nineteenth-century English society considered the family to be the bastion of morality, and the nation's moral prowess dictated that its divorce laws be harsh and inflexible. Until 1857, the ecclesiastical courts governed divorce and granted divorces with supreme infrequency. Even after the "modernization" of the laws in 1857, husbands and wives had limited options in obtaining a divorce.⁹ The property laws made it attractive for a man in want of a fortune to marry well; however, the divorce laws would not release him from his vows on any but the most serious grounds.

In the ecclesiastical courts there were two possibilities for divorce. First, they granted divorce *a mensa et thoro* to men on the grounds of adultery, cruelty, or desertion, after which neither party was free to remarry. Second, they granted divorce *a vinculo matrimonii*, an absolute dissolution, on the grounds of an invalid marriage due to age, mental incompetence, sexual impotence, fraud, or by private act of Parliament. So, to obtain complete freedom, the marriage had to be either void *ab initio*, or the same effect achieved by a private act of Parliament. The application for a private act was lengthy, onerous and expensive. The process required the ecclesiastical courts to first grant a divorce *a mensa et thoro*. Then the husband had to bring a successful suit against his wife's lover for criminal conversation.¹⁰ Finally, Parliament had to agree to grant a bill with the effect of a divorce *a vinculo matrimonii*. While divorce was far more accessible to men than women, even for a husband the opportunities were scant.

In 1854, Charles Dickens offered an excoriating critique of the divorce laws in *Hard Times*, illustrating how divorce was impossible for the lower classes

⁸ Equity did recognize married women's autonomy, despite the common law, but the practical significance was minimal. While equity courts provided some assistance to women, they did not challenge coverture: MV Turano, "Jane Austen, Charlotte Brontë, and the Marital Property Law" (1998) 21 *Harvard Women's LJ* 181 at 192. The rules of equity failed to undercut the real severity of the coverture laws: MC Goodwin, "The Black Woman in the Attic: Law, Metaphor and Madness in *Jane Eyre*" (Spring, 1999) 30 *Rutgers LJ* 597 at 637. There were, however, a number of interesting exceptions to the law of coverture as discussed by K Pearlston, "At the Limits of Coverture: Judicial Imagination and Married Women's Agency in the English Common Law," PhD dissertation, Osgoode Hall Law School, York University, 2007 [unpublished].

⁹ *Matrimonial Causes Act, 1857*, (UK) 20 & 21 *Vict*, c 85.

¹⁰ This action was only available to husbands and had to be brought against his wife's lover, as his wife and her sexual services were considered his property.

and often a burden too great for the wealthy as well.¹¹ In this narrative, Stephen Blackpool, a virtuous factory worker, is married to a drunken, deserting wife who returns home only frequently enough to take what money he has and destroy his life. Stephen approaches his employer, Mr. Bounderby, with his plight, asking for the man's advice. After Mr. Bounderby expounds on all of the laws against Stephen, he relates the one law that would rid Stephen of his wife and leave him free to remarry:

There is such a law. ... But it's not for you at all. It costs money. It costs a mint of money. ... Why, you'd have to go to Doctors' Commons with a suit, and you'd have to go to the court of Common Law with a suit, and you'd have to go to the House of Lords with a suit, and you'd have to get an Act of Parliament to enable you to marry again, and it would cost you (if it was a case of very plain-sailing), I suppose from a thousand to fifteen hundred pound. ... Perhaps twice the money.¹²

Dickens depicts the harshness of the divorce laws by showing their effect on a noble man in a lamentable situation. While, for most Victorians, to sanction divorce was to sanction immorality, a vocal group of reformers called for a relaxation of the laws. This group included the likes of Dickens, who was notoriously trapped in an unhappy marriage, and Lady Caroline Norton, whose tyrannical husband turned her in to an advocate for reform.¹³

Three years after Dickens published *Hard Times*, Parliament reformed the divorce laws and created the divorce court. While the legislation, *Matrimonial Causes Act* (1857), moved the basis for marriage from sacrament to contract, the new court's standard for divorce was not much lower than the ecclesiastical courts had required.¹⁴ A divorce a mensa et thoro became a judicial separation. The divorce court granted it to either husband or wife on similar grounds to those available in the ecclesiastical courts. The legislation did expand the grounds for an absolute divorce, but they remained the most egregious in nature.¹⁵ Wilkie Collins used the continued inadequacy of the new laws as the premise for *The Law and the Lady*.¹⁶ In that novel,

¹¹ C Dickens, *Hard Times* (1854), (London: Penguin, 1995).

¹² *Ibid* at 79.

¹³ Christine Krueger has pointed out that Dickens also threatened to have his wife incarcerated in an asylum in frustration at the divorce laws: *Reading for the Law: British Literary History and Gender Advocacy* (Charlottesville: U of Virginia P, 2010) at 144.

¹⁴ *Matrimonial Causes Act, 1857, supra* note 9.

¹⁵ While a husband could obtain a divorce for mere adultery, the qualifiers common to husbands and wives were incestuous adultery, bigamy combined with adultery, rape, sodomy, bestiality, adultery combined with cruelty, and adultery combined with two years' desertion: *Matrimonial Causes Act, 1857, supra* note 9 at s 27.

¹⁶ W Collins, *The Law and the Lady* (1875), (London: Penguin, 1998).

in a moment of soon-repentant valour, Eustace Macallan married his first wife. Her visit to his lodgings, alone and uninvited, without subsequent marriage would have besmirched her virtue and destroyed other marital prospects. After the marriage, Eustace's misery at the match is apparent, leading his wife to commit suicide and the courts to charge him with her murder. As neither party to the match was guilty of anything more than incompatibility, the law provided no avenue for divorce. Collins's novel illustrates the disastrous effects that the binding and irreversible ties of marriage could have and the continued inadequacy of the divorce laws.

While the morality of the nation required such laws, this morality did not necessarily correlate with individual desire. Since divorce was not something that unhappy husbands and wives could accomplish directly, it was left to their ingenuity to improvise it indirectly. The collusion of the property laws and the lunacy laws provided an avenue for the now-propertied husband to be rid of his now-unpropertied wife. The ease with which a nefarious husband could commit his wife to an asylum made this indirect route an attractive alternative to a life of marital discord. While committal of a wife to an insane asylum did not end the marriage, it did remove the day-to-day encumbrance of a wife and the accompanying expense.

Following their introduction in 1774, the lunacy laws provided a legal framework for this method of improvised divorce. Prior to 1774, no laws had regulated the committal of the insane to madhouses. Medicine was still focussed on the body and had not yet dared address the complexities of the mind. Likewise, the legal system regulated only the body and had not yet applied its strictures to the mind. The consequence was that, should a husband be inclined, he could trek to the nearest madhouse, wife in tow, and commit her. Lack of medical or legal regulation meant that there was little to prohibit the committal and no record of it. The sole hope of a surreptitiously sequestered wife was that friends would discover her situation and obtain a writ of habeas corpus to set her body free. In *The Road to Divorce: 1530-1987*, Lawrence Stone provides a miscellany of pre-nineteenth-century instances in which husbands endeavoured to use the hinterland of the madhouse to lose a wife and gain a fortune.¹⁷ For example, in a 1691 case, *Graves v. Smith*, the rogue married a wealthy widow, then shut her up in a madhouse and made free with her money.¹⁸ However, court record of such cases is anomalous because coverture meant a married woman could not bring an action against her husband, notwithstanding his tyrannical behaviour, because the two were one legal being.

The abuses without regulation were sufficiently apparent that Parliament managed a pittance of reform to the madhouse system with the *Madhouse Act*

¹⁷ L Stone, *The Road to Divorce: 1530-1987*, (Oxford: UP, 1990) at 164-69.

¹⁸ L Stone, *Uncertain Unions and Broken Lives: Marriage and Divorce in England, 1660-1857*, (Oxford: UP, 1995).

(1774).¹⁹ The effect, however, was to legitimize the process of committal. This first act addressed the rudimentary issues of committal: madhouses were to possess licences issued by the College of Physicians, they were to keep a record of their patients, admission of patients required doctors' consent, and the madhouse must be open to inspection by Commissioners in Lunacy. Stone comments that this regulation "put a stop to the worst of these abuses."²⁰ However, the rudimentary checks that the *Madhouse Act* (1774) required were not likely to deter the husband who was nefarious enough to commit his wife to one of the dungeons that were the first private madhouses, particularly as there was no sensible legal way for husbands to get rid of their wives. The legislation legitimized the process, providing a legal framework within which to act.

Parliament substantially expanded the first madhouse legislation with the *Insane Persons Act* (1828).²¹ This Act established the certification process that would remain the framework of the lunacy laws until the grand reform in 1890.²² Parliament made incremental changes prior to the grand reform, but the existence of the laws meant that so long as they were complied with, the "conduct" was legitimate. Under the *Insane Persons Act* (1828), the procedure to place a person in an insane asylum required an Order and a Medical Certificate signed by two doctors who had examined the patient separately and personally. However, this procedure applied only to people who did not or could not hold property, such as married women.²³ Thus, the opinions of husbands, who signed the Orders, and the medical men, who signed the Certificate, were all that the law required to commit a married woman.

A patient by certification had two legal options for release. Either the person who had signed the Order could request the patient's release or the visiting Commissioners in Lunacy could assess the patient as sane. The Commissioners attended each asylum four times a year, and to release a patient three separate visits had to confirm that the law had confined the person wrongly.²⁴ The effect was that, if the law had confined a person inappropriately, even if this was utterly evident to the visiting Commissioners, the person would be kept in the asylum for at least nine months.

¹⁹ *Madhouse Act*, (1774), *supra* note 2.

²⁰ L Stone, *The Road to Divorce: 1530-1987*, *supra* note 17 at 168.

²¹ An Act to Regulate the Care and Treatment of Insane Persons in England, (1828), (UK), 9 Geo IV c 41.

²² The statute also established the Metropolitan Commissioners in Lunacy, as noted by R Porter, "Georgina Weldon and the Mad Doctors" in R Porter, H Nicholson and B Bennett, eds, *Women, Madness and Spiritualism*, *supra* note 5 at 8.

²³ A *commissio de lunatico inquirendo* was required under the legislation, if a person held property, as discussed below.

²⁴ *Insane Persons Act*, 1828, *supra* note 21 at s 37.

The formalities that governed the committal of married women gave husbands a legal framework in which to act. The abuse to which a husband could put the combined effect of property and lunacy laws is the premise of Wilkie Collins's *The Woman in White*.²⁵ Collins's plot depends on the inappropriate incarceration of Laura Fairlie by her husband, Sir Percival Glyde, in an insane asylum. Collins based the narrative on Laura's nonexistence as a person after her marriage. The white of her wedding dress is symbolic of the erasure of her legal status on marriage.²⁶ While Glyde obtains most of her fortune when they marry, an additional sum exists that he can have only with her consent or on her death. The debts of his bachelorhood demand the sum. Since he is unsuccessful in bullying it out of his wife and is not quite evil enough to murder her, he stages her death. Conveniently for Glyde, Laura has an ever-present Victorian doppelgänger, the result of her father's affair with a servant. The illegitimate Anne Catherick has the additional distinctions of previous incarceration in an insane asylum and a heart condition. Anne dies in fact; Laura dies on paper; "Anne on paper/Laura in fact" is re-institutionalised; and Glyde takes her money. First the law takes Laura's legal identity, then it takes her mind. Although Glyde is not committing Laura as his wife, the plot illustrates the ease with which doctors certified women for committal under the lunacy regime.

People who possessed property were not subject to the usual certification process but a *commission de lunatico inquirendo*.²⁷ Assessment by a Commission in Lunacy gave the alleged lunatic the opportunity to plead sanity, to rebut evidence of insanity, and to present oneself. This opportunity offered a distinct advantage for the sane over the situation that faced a *feme covert*. This procedural advantage reflects the value that the law placed on property and those who possessed it. Having said this, the effect of committal by a Commission in Lunacy was that visiting Commissioners had no discretion to discharge a patient whom they felt was wrongfully committed. The patient had had his day in court and it would reflect badly on the system if the Commissioners were to render conflicting decisions. However, given the difficulty and duration of obtaining discharge by the visiting Commissioners, the deprivation of this option hardly equalized the position of married women and propertied men.

The piecemeal refinement of the lunacy laws during Queen Victoria's reign acknowledged that the laws did need improvement and illustrate their ineffectiveness at providing justice. The law makers failed to realize that it was not the details of the legislation that allowed abuse, but rather that the structure of the law had entrenched

²⁵ W Collins, *The Woman in White* (1859-60), (London: Penguin, 1974).

²⁶ L Ledwon, "Veiled Women, the Law of Coverture, and Wilkie Collins's *The Woman in White*" (1994) *Victorian Literature and Culture* at 1.

²⁷ *Insane Persons Act, 1828*, *supra* note 21.

the abuse. Beginning in 1842, the formalities of insanity proliferated. In 1842 Parliament amended the number of visits required by Commissioners to release an inmate whom they believed sane from three to two in the *Lunatic Asylums Act* (1842).²⁸ A nine-month delay in release was not acceptable; however, a six-month delay was now wholly appropriate. A great number of changes came in 1845 with the *Lunacy Act* (1845), as Parliament attempted to deal with abuses resulting from conflicts of interest.²⁹ These amendments suggest that it was evident that not only had a trade in lunacy developed but that the charm of sterling was more compelling to some doctors than professional duty. Parliament required a degree of fiscal objectivity in the signing of Certificates and Orders and in the licensing of asylums. Likewise, certifying physicians had to specify the factual underpinnings for the specific cases of certified insanity.³⁰ Previously, certification required only the signature of a doctor under a statement that the patient was of unsound mind. Additionally, the law now required an Order and Certificate to confine a single lunatic to a house whereas prior legislation required this procedure only if the institution housed two or more lunatics.³¹ The old legislation had meant that only in a registered asylum with more than one lunatic was a record kept of that person.

While additional restrictions did offer more protection to alleged lunatics and those who were confined, their greatest effect was to protect those people who committed them. By outlining specifically what Parliament required of doctors and proprietors of asylums, the law protected them from reprimand for wrongdoing if they conformed to the requirements of the legislation. The *Lunacy Act* (1845) explicitly included this defence: in any writ, indictment, information, or proceeding brought against a proprietor for taking a patient, the party complained of may plead such Order and Certificate as a defence.³² In this way, the Orders and Certificates served the dual purpose of protecting both the alleged lunatics and those who committed them.

Further amendment in the *Lunacy Amendment Act* (1853) increased the advantage of possessing property for those facing lunacy proceedings. With this

²⁸ *Lunatic Asylums Act, 1842*, (UK) 5&6 Vict c 87 at s 16.

²⁹ Parliament passed the *Lunacy Act, 1845*, (UK) 8&9 Vict c 100. The Metropolitan Commissioners in Lunacy established under the *Insane Persons Act (1828)* became the national authority: see R Porter, "Georgina Weldon and the Mad Doctors" in R Porter, H Nicholson and B Bennett, eds, *Women, Madness and Spiritualism*, *supra* note 5 at 8. Porter explains that the Lunacy Commission was a full-time body of laymen, physicians and barristers composed of eleven men in total who were to inspect all asylums twice a year and metropolitan licensed houses four times a year. C Krueger has observed that the meeting of the Commissioners in Lunacy are in the "dispassionate language of a bureaucratic record, they take on a Kafkaesque quality ..." in *Reading for the Law*, *supra* note 13 at 137.

³⁰ *Lunacy Act, 1845*, *supra* note 29 at s 46.

³¹ *Ibid* at s 90.

³² *Ibid* at s 99.

legislation, the property holder got the extra benefit of a jury assessing the veracity of the allegations against his mind in a Commission in Lunacy.³³ However, the law continued to deny this benefit to married women, whom the property and divorce laws placed most at risk of committal. Accompanying these changes, Parliament made further modifications to the certification process. An Order now had to contain a Statement of Particulars, divulging the basis on which the signer made the claims of insanity, and the signer had to have seen the alleged lunatic within the previous month.³⁴ Likewise, the person signing the Order was not to have an interest in the payments made to the institution that was to receive the patient.³⁵ The laws, however, did not operate alone to the disadvantage of married women; they found a sympathetic ally in the medical profession.

Masculine Appropriation of the Care and Diagnosis of Insanity

As the lunacy laws evolved to legitimize committals, medicine evolved to justify them. With the sanction of properly conducted committal came an accompanying shift in the language of madness. No longer were there madhouses, madhouse keepers, madmen and madwomen; there were asylums, proprietors, alienists, and lunatics. These institutions were anything but asylums, particularly for Victorian women. The word derives from the ancient Greek *ασυλον*, meaning “no right of seizure,” but the husbands of women in asylums had already seized them. The shift in language is demonstrative of society’s condoning confinement. It hardly seems possible that one would need protection from being committed to an asylum in the true sense. This linguistic shift and the accompanying bureaucracy of committal did not alter the reality of marital relations and confinement.

Asylums became paragons of masculine domestic and financial control.³⁶ Traditionally, women had run the madhouses and taken care of the inmates. In the nineteenth century, men assumed this role. Matrons no longer operated madhouses as a sort of cottage industry. Rather, medical men institutionalised the industry, and with the ensuing officiousness came the appearance that conditions had improved. By the mid-nineteenth century, the medical profession had successfully ostracised women from almost every capacity in the asylum except patient:

Between 1854 and 1870, about one of five provincial licensed houses and

³³ *Lunacy Amendment Act, 1853*, (UK) 16&17 Vict c 70 at s 40.

³⁴ *Lunacy Amendment Act, 1853*, (UK) 16&17 Vict c 96 at s 23.

³⁵ *Ibid* at s 24.

³⁶ The diagnosis of madness and threat of certification served the patriarchy by removing women who did not conform to the feminine ideal: see V Skultans, *Madness and Morals: Ideas on Insanity in the Nineteenth Century* (London: Routledge, 1975) and J Ussher, *Women’s Madness: Misogyny or Mental Illness?* (New York: Harvester, 1991).

one out of four metropolitan licensed houses still had female proprietors, but the claims of the medical profession that, despite the apparent commonsensical nature of moral management, only doctors were qualified to treat the insane, gradually forced women into marginal, secondary, or volunteer roles, much as the rising profession of obstetrics demoted midwifery.³⁷

Correspondingly, for the first time in English history, female lunatics outnumbered male patients. As Elaine Showalter discusses, by the 1850s, not only did society confine more women than men in lunatic asylums but architects designed the institutions to accommodate a greater number of female patients than male.³⁸ Sanity was masculine; insanity was feminine.

Along with these changes, the psychiatric profession emerged as a legitimate and recognised medical practice. The medical profession not only denied female madhouse keepers' ability to discern and treat the nuisances of madness but also doubted that of the ordinary man. Setting the tone for the century, London psychiatrist John Reid commented in 1808 that "more people are mad than are supposed to be so. There are atoms, or specks of insanity, which cannot be discerned by the naked or uneducated eye."³⁹ Practitioners of medicine alone were able to detect insanity and men alone were able to practice medicine. In an extreme example of the monopolization of sanity by the psychiatric profession George Man Burrows, an English psychiatrist writing in 1828, suggested:

the maniacal odour is not noticed by every writer on the signs of insanity. Nor as I have said is it always present; but I consider it a pathogonomic symptom so unerring, that if I detected it in any person, I should not hesitate to pronounce him insane though I had no other proof of it.⁴⁰

This monopolization of sanity meant that men were the arbiters of the psyche, and their diagnoses were hard on women.

Deviation from the standard of thought and behaviour constituted insanity. As John Stuart Mill commented, maintaining the distinction of sanity was a social

³⁷ E Showalter, *The Female Malady: Women, Madness, and English Culture (1830–1980)*, (New York: Pantheon, 1985) at 53.

³⁸ *Ibid* at 64.

³⁹ Quoted in W Parry-Jones, *The Trade in Lunacy*, (Toronto: UP, 1972) at 11.

⁴⁰ GM Burrows, "The Odour of Insanity" (1828) in V Skultans, ed, *Madness and Morals*, *supra* note 36 at 78.

tightrope performance: "Those who indulge too much in what nobody does or fail too glaringly to do what everybody does ran the risk of a *commission de lunatico*."⁴¹ While the latter comment was applicable only to those who had property, the subjectivity in the definition of sanity is evident. Given that men defined the standard, they judged the sanity of women according to what they believed it should be.

According to the rhetoric, women were particularly susceptible to insanity due to the weakness of their constitution and the havoc caused by the female reproductive organs. Keeping with Greek tradition, medicine linked hysteria directly to the uterus. The Greek word *ὑστερ* is the origin of both the English uterus and hysteria. Plato connected female hysteria to the wanderings of the womb, declaring if the generation of children did not occupy the womb then it strayed about and cut off the passages of breath.⁴² A woman *ipso facto* ran a greater risk of insanity than did a man. As Elaine Showalter has pointed out, risks to the brain included menstruation, maternity, lactation, ovulation, conception and menopause.⁴³ At each stage of womanhood lurked a threat to the mind. However, the plague that affected women's minds most often and most painfully was their menstrual cycle. The impact of the monthly cycle on the female body is part of the word lunatic itself: the Latin *lunaticus* originated with the word for moon -- *luna* -- and the belief that lunacy fluctuated with phases of the moon that correlated with the menstrual cycle. Thus, the male definition of insanity fell barely short of the biology of womanhood.

In addition, moral insanity plagued women at a far higher rate than men. Sexual desire, anger, and aggression were all morbid deviation from the normal Victorian female personality.⁴⁴ Medical men were apt to describe as insane women who were disobediently rebellious, or in open protest of the female role. Alfred Beaumont Maddock, a Victorian doctor, pontificated on the connection between the biology of a woman's body and her moral inadequacy: the reproductive organs were "interwoven with erratic and disordered intellectual, as well as moral manifestations."⁴⁵ Moral insanity diagnosed strong-minded women as insane women and this was just what the doctor ordered when a husband was looking to rid himself of a bothersome wife.

Mary Elizabeth Braddon illustrates the peril of strong-mindedness for

⁴¹ JS Mill, *On Liberty* (1859), (Chicago: UP, 1955) at 99.

⁴² SM Gilbert, "Wandering Wombs," *The Times Literary Supplement*, January 20, 1995.

⁴³ E Showalter, "Victorian Women and Insanity" in A Scull, ed, *Madhouses, Mad-Doctors and Madmen*, (Pennsylvania: UP, 1981) 313 at 322.

⁴⁴ *Ibid* at 322.

⁴⁵ AB Maddock, "Insanity and Morbid Conditions of the Generative Apparatus" (1854) in V Skultans, ed, *Madness and Morals: Ideas on Insanity in the Nineteenth Century*, (London: Routledge, 1975) at 228.

women in *Lady Audley's Secrets* in 1862. Lady Audley seems to personify the Victorian ideal of a woman: sweet, doting, and complacent. However, the medical man diagnoses her as insane because she takes control of her life. She is the *dolce nemesis* of Victorian women:

She ran away from her home, because it was not a pleasant one, and she left in hope of finding a better one. There is no madness in that. She committed the crime of bigamy, because by that crime she obtained fortune and position. There is no madness there. When she found herself in a desperate position, she did not grow desperate. She employed intelligent means, and she carried out a conspiracy which required coolness and deliberation in its execution. There is no madness in that.⁴⁶

Notwithstanding these comments, the doctor finds her insane after a fifteen-minute meeting. His diagnosis reinforces the argument that insanity meant simply not conforming to the female role of passivity, of readiness for moulding at the hands of a husband.

In accordance with moral insanity, sexuality and sexual pleasure were not found in the normal Victorian woman, according to the medical profession, but arose from a disturbance of the mind. Elaine Showalter comments that medicine diagnosed nymphomania primarily in women and defined it by erratic sexual behaviour, including premarital sex, fantasies and orgasm.⁴⁷ In *Jane Eyre*, Charlotte Brontë makes this connection. Bertha Mason is out of her mind and part of her madness is sexual desire. Edward Rochester laments his wife's sexual rapacity: "Bertha Mason, -- the true daughter of an infamous mother, -- dragged me through all of the hideous and degrading agonies which must attend a man bound to a wife at once intemperate and unchaste."⁴⁸ Bertha's behaviour emasculates Rochester and, to his mind, her appropriation of the role of sexual dominance indicates insanity.

At the opposite end of the spectrum, frigidity was also grounds for diagnosing insanity. A nullity case, in which a husband sought to free himself from his marriage on the basis that his wife was insane before the union, illustrates this claim.⁴⁹ Proof of this insanity was a bride's reluctance to consummate the marriage:

⁴⁶ ME Braddon, *Lady Audley's Secrets* (1862), (New York: Dover, 1974) at 248.

⁴⁷ E Showalter, "Victorian Women and Insanity" *supra* note 43 at 324.

⁴⁸ C Brontë, *Jane Eyre* (1847), (Oxford: UP, 1993) at 323.

⁴⁹ *Hunter v Edney, otherwise Hunter* (1881), 10 PD 93. This case as well as other nullity suits are discussed in M Williams, "Medico-Legal Stories of Female Insanity" (1998) VI 1 *Feminist Legal Studies* 3.

She lay down on the bed in her clothes, and for three hours refused to undress, and in the morning asked her husband to cut her throat. The marriage was not consummated. In the morning the medical man was called in, who pronounced her to be insane.⁵⁰

Here, lack of sexual desire (or accommodation) was the basis for the insanity diagnosis. While the theory that both salaciousness and frigidity equated to moral insanity seems paradoxical, the commonality is that, in a particular circumstance, the behaviour deviated from and defied masculine desire. The breadth of female behaviour considered insanity meant that it was an easy task to get the certification that the law required. Thus, the medical profession aided the law in the development of the madhouse divorce.

Exposure of the Failings of the Law and Medicine in Popular Literature

Through the nineteenth century, popular literature was replete with tales of husbands consigning unwanted wives to madhouses so they might live with almost all of the freedom of a bachelor. Shortly after Parliament passed the *Madhouse Act* (1774), Mary Wollstonecraft's posthumously published *Maria; or, The Wrongs of Woman* demonstrated the popular anxiety about women's liberty, particularly vis-a-vis their husbands.⁵¹ As the fictional accompaniment to *A Vindication of the Rights of Woman*, Wollstonecraft chose the effect of the lunacy, property and divorce laws to illustrate the conclusion in her treatise: "Was not the world a vast prison, and women born slaves?"⁵² In *Maria; or, The Wrongs of Woman*, Maria's tyrannical husband confines her to a madhouse following the birth of her first child. He is then free to spend Maria's fortune and woo his new lover, though he is not free at law to marry her.

Jane Eyre also illustrates how a husband could rid himself of his wife through the lunacy laws. While Brontë does not present Bertha Mason in a manner that brings sympathy for her plight, Edward Rochester did not do right by his first wife. Having married Bertha for nothing but her family fortune, his fate befits him when she goes mad and he remains shackled to her by law for the rest of her days. However, Rochester makes the best of his predicament: he confines Bertha to the attic at Thornfield where no one knows of her existence save the town doctor and Bertha's drunken care-giver. This leaves Rochester free to present himself as the eligible bachelor about town, flitting off to Europe, taking mistresses, beseeching an innocent to engage in a bigamous marriage -- all financed by the Mason fortune.

⁵⁰ *Hunter v Edney*, otherwise *Hunter* at 93.

⁵¹ M Wollstonecraft, *The Wrongs of Woman* (1798), (Oxford: UP, 1988).

⁵² M Wollstonecraft, *A Vindication of the Rights of Woman* (1792), (London: Penguin, 1992) at 242.

Brontë, writing in the early 1840s, seized on the lunacy laws that allowed husbands to keep their wives confined alone at home without any regulation. If a disgruntled husband wished, he was within his rights to confine his “mad wife” and care for her privately without medical sanction or treatment. In Rochester’s case, because there was no record of his wife, he almost succeeded in acquiring a new bride.

Fascination with the “madhouse divorce” followed the literary shift from gothic to sensation fiction of the 1860s. Wilkie Collins employed the asylum as a means for Sir Perceval Glyde to rid himself of his wife in *The Woman in White* and Mary Elizabeth Braddon used the device in *Lady Audley’s Secrets* to rid Sir Michael Audley of his wife as well. *The Woman in White* puts a twist on the traditional way husbands disposed of their wives in asylums but the same legal principles allowed Glyde’s actions. Lady Audley was similar to Bertha Mason in that neither elicited much sympathy from the Victorian reader; this response reflects the general opinion of femininity. Critics berated Lady Audley as a Machiavellian villainess, while they heralded Rochester – who also knew what he wanted and employed any means possible to get it – as a sympathetic soul.

In 1863 the mad doctors and the lunacy laws had to deal with direct criticism of the madhouse system in Charles Reade’s wildly successful sensation thriller *Hard Cash*.⁵³ Reade reviled the system and those who ran it. Earlier literature had written around the issue of the lunacy laws, but Reade attacked them directly and mercilessly. In *Hard Cash*, Alfred Hardie’s father, Richard, embezzles money from his son’s trust account; the banker’s crime will be revealed if he does not stop Alfred’s marriage. As such, Richard, having already denied his consent to Alfred’s match, relies on lunacy laws to confine his son and to keep his secret. The morning of Alfred’s nuptials, Richard lures him to the asylum with a forged note. Richard has arranged an Order and Medical Certificates for Alfred’s committal and, once he voluntarily steps into the asylum, he can no longer claim *a commisso de lunatico inquirendo*. Thus, his father’s cunning reduces Alfred in status and rights to the position of a married woman: he must appeal to the visiting Lunacy Commissioners for his freedom.

While Alfred suspects his situation is the result of his father’s contrivance, Richard has the foresight not to sign the Order confining his son. Rather, Richard forces Alfred’s uncle to sign it under the threat that if he does not, Richard will confine him to an asylum as well.⁵⁴ Thus, Reade doubles the impact of the lunacy laws on his characters, thereby doubling the horror of his readers at the characters’ vulnerability. Richard arranges everything for Alfred’s committal according to law:

⁵³ C Reade, *Hard Cash* (1863), online: Project Gutenberg <www.gutenberg.org> [accessed November 18, 2011] [C Reade].

⁵⁴ Reade is careful to mention early in the novel that Alfred’s uncle is a bit “off.”

“the order was signed by a relation, and the certificates by first-rate lunacy doctors.”⁵⁵ Instead of these measures protecting Alfred, they protect the proprietor. When Alfred asks what the Order and Medical Certificates have to do with his incarceration when he is sane, the response epitomizes the failing of the lunacy laws:

It has everything to do with it. Mr. Baker could be punished for confining a madman in this house without an order and two certificates; but he couldn't for confining a sane person under an order and two certificates.⁵⁶

Reade constructed Alfred carefully as a model of sanity: a first from Oxford, an athlete, a kind soul, and a loyal son. By committing the most sane person in the novel, Reade shows the power of the lunacy laws to deprive the sanest man of his mind. He plays on the public fear that the laws were confining healthy people to asylums: “Pray think of it for yourselves, men and women, if you have not sworn never to think over a novel. Think of it for your own sakes: Alfred's turn to-day, it may be yours to-morrow.”⁵⁷ Once the profession labels him with the taint of insanity, Alfred loses his mind to medical opinion.

His father's chicanery relegates Alfred to the asylum without appeal to a *commission de lunatico inquirendo*. The weight of medical opinion against the foibles, follies and frailties of the female sex, however, make Alfred's position better than that of an equally sane and situated woman. While his chance at success is small, his only option is to appeal to the visiting Lunacy Commissioners:

The mad statutes, which by threefold temptation of Facility, Obscurity, and Impurity, insure the occasional incarceration and frequent detention of sane moneyed men, do provide, though feebly, for their bare liberation, if perchance they should not yield to the genius loci, and the natural effect of confinement plus anguish, by going mad or dying.⁵⁸

Alfred's proving his sanity, when the system has already judged him to be a lunatic is a near impossible task.

The *modus operandi* of the asylum proprietors is to undercut any progress Alfred makes with the visiting Lunacy Commissioners, by way of his appearance,

⁵⁵ C Reade, *supra* note 53 at Chapter XXXII.

⁵⁶ *Ibid*, at Chapter XXXII.

⁵⁷ *Ibid*, at Chapter XXXI.

⁵⁸ *Ibid*, at Chapter XL.

indisputable generalizations, and foreboding diagnoses. On the first visit of the Lunacy Commissioners, the proprietor drugs Alfred; however, Alfred prevails and attempts to relate his story. As a result, the doctor orders his hair shaved and a large blister for the top of his head. Although Alfred now looks like a madman, still “the obstinate brute declined to go mad.”⁵⁹ In addition to the shaved head and blister, Alfred’s dress is that of a lunatic: “The stinginess of relations, and the greed of madhouse proprietors, make many a patient look ten times madder than he is by means of dress.”⁶⁰ On Alfred’s second interview with the visiting Lunacy Commissioners, the asylum doctor whispers “Take care, sir. Dangerous!”⁶¹ -- as Reade comments, this is one of the most effective formulae in a private asylum. In the course of the interview Reade enlightens his audience with a number of these formulae:

Don’t excite yourself ... [publicity] would be most undesirable exposure, both to yourself and your friends ... [he is deranged] dangerously so at times. But in his lucid intervals you never saw a more quiet gentlemanly creature ... He is a most interesting patient.⁶²

Eventually, Alfred gains an interview with the visiting Lunacy Commissioners through which he avails in presenting himself as a man in full possession of his faculties. However, the bureaucracy of the “mad statute” requires the Lunacy Commissioners to apply to the Board for approval of Alfred’s release. Alfred’s father stalls approval by the Board, until he can have Alfred transferred to a less benevolent asylum.

Throughout Alfred’s plight, Reade focusses on the subjectivity of sanity. His characters, doctors included, define sanity in comparison with their own minds. Each time a character assesses sanity, the arbiter declares “why he is as sane as I am.” Reade’s portrayal is in keeping with the contemporary medical assessments that defined insanity according to the standard of the masculine norm and desire. The effect of the characters’ comments is to illustrate repeatedly the slippery notion of sanity.

⁵⁹ *Ibid.*, at Chapter XXXII.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.* This same reasoning was applied in Wollstonecraft’s *Maria; or, The Wrongs of Woman*. As Christine Krueger puts it, “Jemma [Maria’s keeper] approaches her charge with the Alice in Wonderland logic that Maria must be insane because she is in a madhouse. Furthermore, the madhouse proprietor has warned her that medical experts know that the insane are capable of lucid intervals – hence, any signs of rationality on Maria’s part can be subsumed into an expert definition of insanity” in *Reading for the Law*, *supra* note 13 at 118.

When Alfred finally escapes from the asylum, it is not through official channels. After he is free and walks amongst the sane, society accepts him as sane though nothing in his character has changed. Alfred then embarks on a suit to right the wrongs he has suffered and dissipate the cloud of insanity that follows him. He finds little in the legal system to assist his case; however, his ally -- Dr. Sampson -- shows him the way to achieve his end. According to Sampson,

In England ... Justice is the daughter of Publicity. Throughout the world deeds of villainy are done every day in kid gloves: but, with us, at all events, they have to be done on the sly! Here lies our true moral eminence as a nation. Utter then your 'fiat lux,' cast the full light of publicity on this dark villainy; and behold it will wither, and your oppressed and injured fellow citizen be safe from that very hour.⁶³

Justice was to be had through the sanitising effect of sunlight, rather than the effectiveness of the law. With his novel, Reade endorses the very technique he has Sampson suggest. When Alfred's case finally arrives at trial, he must "out-sane" them all to reclaim his place in society. While the proprietors of the asylums warn him that publicity is the thing most detrimental to his case, it is the only means by which he can obtain justice.

Hard Cash also addresses the profit motive of relatives, mad doctors, and asylum proprietors from a perspective distinct from the unscrupulous committal of wives for their money. Beyond the cupidity of the relatives who sought to commit alleged lunatics, the avarice of those in the lunacy business drove the industry. As the title of Reade's novel -- *Hard Cash* -- suggests, the profit motive reigned in the kingdom of (in)sanity. Despite the conflict-of-interest provisions in the legislation, in Reade's work the doctors and asylum keepers have unsavoury and illegal pecuniary interests in their patients remaining patients. The certifying doctors take a cut of asylum fees and the asylums do not spend the fees on patient care. Reade suggests the reality of the private asylum through fiction:

Besides Alfred there were two patients in Drayton House who had never been insane ... There were also three ladies and one gentleman, who had been deranged, but had recovered years ago. This little incident, Recovery, is followed in a public asylum by instant discharge; but, in a private one, money, not Sanity, is apt to settle the question of egress ... In public asylums about forty per cent are said to be cured. In private ones twenty-five per cent, at least; most of them poorish. Of Chancery Lunatics not five per cent. Finally one-third of all Chancery Lunatics do every six years exchange the living tombs they are fleeced and bullied in for dead tombs where they do rest; and go from the shame protection of the Lord

⁶³ C Reade, *supra* note 53 at Chapter XLVI.

Chancellor of England to the real protection of their Creator and their Judge.⁶⁴

The private asylums were easy to get into and near impossible to escape.

Reade juxtaposes this respective ease and difficulty with the situation of John Maxley. Maxley is one of the many men destroyed financially by Richard Hardie. As a result of Richard's embezzlement, Maxley loses his life's savings and as a result of losing his life's savings he loses his wife. Having lost all of this, Maxley loses his mind. The rub is that, having lost his fortune before he lost his mind, he cannot get admittance to an asylum. Alfred's father, in addition to being the town banker by day and the town swindler by night, serves as a justice of the peace. Maxley appeals to him to sign his committal to an asylum for paupers but Richard denies him, ever vigilant about protecting the public coffers. In contradistinction to the private asylum, the public asylums were hard to get into and easy to escape from - there is no money in charity.

The response to Reade's work verified his claim for the power of the press. In subsequent editions, indignant letters from the medical community served as an introduction. The letters alleged that Reade's portrayal of the committal process was merely the creation of a sensation novelist; however, reality was the impetus for his novel. He based it on his experience helping an inappropriately committed man to escape. Along with Reade's fiction, a barrage of cases illustrating the inadequacy of lunacy laws came before the public eye.⁶⁵ However, it was not until the highly publicized plight of Georgina Weldon, under the same laws and practices that Reade attacked, that the English courts were forced to assess the state of the law.

Criticism of the Lunacy Laws through the Case of Georgina Weldon

Georgina Weldon's fray with the lunacy laws and mad-doctors began in the Spring of 1878.⁶⁶ Before this time, Weldon and her husband had been living apart and had not seen each other for three years. Weldon kept an orphanage, had a career as a singer, practised spiritualism, and cost her husband £1000 per annum.⁶⁷ Late in

⁶⁴ *Ibid*, at Chapter XLI.

⁶⁵ See A Owen, *The Darkened Room: Women, Power and Spiritualism in Late Victorian England*, (Pennsylvania: UP, 1990).

⁶⁶ This overview is based on contemporary reports of Weldon's case in *The Times*, Weldon's pamphlet *How I Escaped Mad Doctors (1882)* reproduced in R Porter, H Nicholson and B Bennett, eds, *Women, Madness and Spiritualism*, *supra* note 5, and benefits from two biographies on Weldon: E Grierson, *Storm Bird: The Strange Life of Georgina Weldon* (Chatto & Windus: London, 1959) and, more recently, B Thompson, *The Disastrous Mrs. Weldon*, *supra* note 6.

⁶⁷ The match was a love match: qualified by the fact that Henry Weldon was not well off, while Weldon

1877, Weldon travelled to France with six of her wards and contemplated setting up an orphanage there. She sent word of this potential endeavour to a Mr. Neal – her husband’s London solicitor – and, in discussing the arrangement, Neal treated her as a competent adult who could manage her affairs. While in France, Weldon received information that an unauthorised man was staying at her home, Tavistock House, and that her possessions were in danger. She also caught scent of a rumour that her husband was considering having her committed to an insane asylum. On hearing this news Weldon prayed, asked for guidance, and a voice directed her home immediately.

From the moment of Weldon’s arrival at Tavistock House, things were not right. She found the man, Anacharsis Menier, in the midst of removing her possessions. According to him, however, he was in the house under the consent of Weldon’s husband, Henry, and was removing her property in satisfaction of a debt. Though subsequent court actions never explained fully Menier’s actions, the implication is that they were related to her husband’s plan.⁶⁸ A week after Weldon’s return, Henry called on Dr. Lyttleton Stuart Forbes Winslow, to whom he was a stranger, regarding the state of his wife’s mind.⁶⁹ Henry told the doctor that his wife had taken several children to France and abandoned them on her return, a return spurred by a voice in her head. He also mentioned that there was insanity in her family, and showed the doctor a letter from her mother stating “things with G. are coming to a dangerous pass” and a letter from her brother saying that he felt someone should restrain his sister.⁷⁰

Dr. Winslow took Henry at his word and did not endeavour to verify any of the information. He called on Weldon at Tavistock House with his father-in-law, Dr. Michell Winn, under assumed names. They premised their visit on the fictitious story that they had a child whom they might like to place under her care. The clandestine nature of their visit did nothing to support the integrity of their profession or actions. After conversing with Weldon under this entirely false premise for thirty minutes,

was the eldest daughter of a rich country gentleman with the prospect of £7000 or £8000. However, by the time the couple separated, Henry had inherited wealth. Under the separation agreement, he was to provide £1000 per annum and the lease on Tavistock House: see R Porter, “Georgina Weldon and the Mad Doctors” in R Porter, H. Nicholson and B. Bennett eds, *Women, Madness and Spiritualism*, *supra* note 5 at 3 and 4.

⁶⁸ Weldon’s prosecution of Menier for theft was a success: R Porter, “Georgina Weldon and the Mad Doctors” in R Porter, H Nicholson and B Bennett, eds, *Women, Madness and Spiritualism*, *supra* note 5 at 15.

⁶⁹ Dr. Winslow ran the family asylum business, was an expert courtroom witness and produced popular forensic psychiatry texts. In his pamphlet *Spiritual Madness (1877)* he identified spiritualism as the main cause of the “insanity epidemic” among weak-minded hysterical women: R Porter, “Georgina Weldon and the Mad Doctors” in R Porter, H Nicholson and B Bennett, eds, *Women, Madness and Spiritualism*, *supra* note 5 at 6.

⁷⁰ *The Times*, March 18, 1884.

Dr. Winslow concluded that Henry's wife might be in need of a companion. Dr. Winslow's diagnosis, however, changed quickly when Henry stated that this option was not possible and that she would have to be committed. At that moment, Dr. Winslow diagnosed Mrs. Weldon with a bout of insanity so serious that it compelled him to commit her at once.

Henry asked Dr. Winslow if he knew of a good spot for her and Winslow had just the place - his own asylum in Hammersmith, at the rate of £550 per annum.⁷¹ Having settled this little business, Henry entreated Dr. Winslow to take care of all of the details concerning her committal, supplied the financing, and departed. To this end, Dr. Winslow drew up an Order and filled up all of the required information, including the Statement of Facts, and left only the places for required signatures blank. While Henry signed the Statement of Facts, they recruited General Henry de Bathe to sign the Order as a whole. The laws required that a person who had seen the alleged lunatic in the last thirty days sign the Order. This requirement created an inconvenience, as Henry had not seen his wife in three years and refused to meet with her now. However, de Bathe, a family friend who had not seen Weldon for the previous two years, called on her for the express purpose of being qualified to sign the Order. This mild inconvenience was all the contrivance the laws required for a properly executed Order.

On the authority of the Order, Dr. Winslow then had to obtain two Medical Certificates based on personal and separate examinations verifying Weldon as insane. To this end, Dr. Winslow engaged Dr. Rudderforth to act as one of the certifying physicians. The same evening, his old friend Dr. Semple called in fortuitously and Dr. Winslow engaged him for the task. Winslow explained to the pair that Weldon's husband wished to commit her to an asylum, but did not mention that he had not seen his wife for three years. With this case history, Drs. Rudderforth and Semple went off to Tavistock House and set about the business of certification.

Like Dr. Winslow, they entered Tavistock House and spoke with Weldon under assumed names and pretences. Their separate and independent examinations consisted of a brief group conversation. Then one left the room, re-entering minutes later so that the other might leave the room. Each "separate and personal interview" ranged, according to the evidence at the trials, from between five and fifteen minutes.⁷² According to the doctors, she claimed to educate her children in three months, to have had a vision of stars falling on her head, and that her pug dog was the devil. According to Weldon, she claimed to educate her children in three years, that the vision was the effect of rubbing her eyes, and that her dog was a daredevil. Notwithstanding that this evidence does not appear definitive with regard to insanity,

⁷¹ Evidence at the various trials reported in *The Times* give this amount as ranging between £400 to £550.

⁷² *The Times*, July 10, 1884.

the doctors made no effort to address the subject of Weldon's mental stability with anyone who knew her. They even neglected to question her maid, with whom they waited in turn while the other conducted a "separate examination".

Having done their duty by the lunacy laws, the doctors returned to Dr. Winslow's house to write out the Certificates for Weldon in the legally required form. Paperwork completed, Dr. Winslow dispatched a servant and two female nurses from his asylum to seize Weldon that very night. Weldon's servants denied the caravan access to her home and it was forced to return the following day to complete its task. This time, the gang entered Weldon's home and Dr. Winslow's servant commanded the nurses "Take her! Take her!", which they attempted to do. However, Weldon escaped their grasp and fled to her room, where she managed to barricade herself for protection.

The caravan then returned to Dr. Winslow's home, to report another failed mission. The clock was ticking on the validity of the Certificates, so Drs. Winslow, Rudderforth, Semple, and Henry Weldon set off to undertake the task themselves. Though foiled in their attempt, a witness heard Dr. Winslow declare "We must have her tonight if it costs a £1000."⁷³ According to Dr. Winslow, a woman who two days before had needed only a companion, now had to be taken immediately and confined in an asylum. Weldon's mind did not make the request urgent; rather, her husband's desire made it urgent. Weldon eluded her "captors" and remained in hiding for a month, until the validity of the Order expired. Neither her husband nor any others made a subsequent attempt to renew the Order and Medical Certificates or to seize her again.

Lucre best explains Henry Weldon's motive for seeking to commit his wife.⁷⁴ Outside the insane asylum, Weldon cost him £1000 per annum; inside the insane asylum she would cost him £550 per annum or less. This enterprise was to save Henry's pocket £450 a year, minus the disbursements associated with her initial committal. These costs, however, were negligible compared with the income stream that his wife's committal would produce. Furthermore, Henry was not the only person to profit at the cost of his wife's liberty. Henry gave Dr. Winslow thirty guineas for the purpose of getting his wife certified and committed.⁷⁵ Dr. Winslow then paid Drs. Rudderforth and Semple five guineas each to certify her, and the expense of a servant and nurses was merely the cost of doing business for the proprietor of an asylum. Finally, the ordinary charge for certification was two or

⁷³ *The Times*, November 27, 1884.

⁷⁴ Embarrassment at her spiritualism and orphanage as well as Henry's possible love interest should also be noted.

⁷⁵ Dr. Winslow argued that he was only the *registered* proprietor of the Hammersmith asylum and therefore the conflict of interest provisions in the law should not apply to him.

three pounds. In light of these facts, Dr. Winslow's offer was generous indeed; beyond the money remaining from the thirty guineas after disbursements, Dr. Winslow was to profit by £550 a year, minus the cost of care, which Reade suggests was minimal.⁷⁶ All said, the business of committing his wife would make Henry £450 a year, Winslow £550 a year, and Drs. Rudderforth and Semple the good hour's pay of five guineas each. All were to profit; no one was to lose.

Besides the tangible profit, intangible benefits enhanced Henry's motivation. He would rid himself of a wife of whom the law would not allow him to dispose. No longer would he suffer embarrassment as his wife took in more children, became more deeply involved in spiritualism, held "sociable evenings", and paraded about town in an omnibus with placards advertising her orphanage and her evenings. A letter from Weldon's brother beseeched Henry to control Weldon and keep her from gallivanting about sporting placards, revealing to all the type of endeavours in which she was engaged. Dr. Winslow focussed on this embarrassment and Weldon's social plan in his assessment of her. In his letter of assessment he wrote that Weldon's current notion "is to go from house to house begging, and endeavour with the proceeds to purchase several more houses and found an institution for lying-in women and adopting the children to educate."⁷⁷ The real reason both doctors and husband believed her to be insane had little to do with the state of her mind, and much to do with the state of her values in relation to their own. In the fictional cases of Bertha Mason and Lady Audley, their husbands' decision to stow them away also had to do with the pain of social embarrassment. In the case of Bertha Mason, this salacious Creole wife mortified Rochester, and in the case of Lady Audley, Sir Michael packed her off to Belgium so that no one would discover her infamy and his mistake. Pride rivals pecuniosity as a husbandly motive.

A third motivation was lust. In an interview with the *London Figaro*, Weldon alleged that her husband and Henry de Bathe had conspired to commit her so that Henry might be free to marry de Bathe's young daughter.⁷⁸ As a result of the interview, Henry successfully sued the *London Figaro's* publisher, insisting that the thought of marrying de Bathe's daughter never entered his head.⁷⁹ In addition, Weldon alleged that de Bathe nurtured a long-standing grievance against her for having rejected his sexual advances when she was a girl. While the law would not

⁷⁶ Dr. Winslow not only profited from the insanity of others by committing them, he also had an extensive career as an expert witness. He testified at practically every major murder trial of criminal insanity: JR Walkowitz, "Science and the Seance: Transgressions of Gender and Genre in Late Victorian London" (Spring, 1988) *Representations* 22, 3-29 at 6.

⁷⁷ *The Times*, March 17, 1884.

⁷⁸ Weldon put this story forth in "Worse than the Bastille" printed in the *London Figaro*, October 1878: see A Owen, *The Darkened Room: Women, Power and Spiritualism in Late Victorian England*, *supra* note 65.

⁷⁹ JR Walkowitz, "Science and the Seance", *supra* note 76 at 27.

have allowed Henry to marry de Bathe's daughter any more than it allowed Rochester to marry Jane, the law was often not aware of the master plan when husbands committed their wives. The British Medical Journal joined Weldon, indicting husbands' abuse of the medical profession and the lunacy laws.⁸⁰ It invoked the example of Rochester and Jane to illustrate how the corrupt husband might manipulate lunacy confinement to further his self-interest. Despite the implications in Weldon's case of a lascivious motive, pounds and shillings were easier to prove when the case went to trial.

While coverture laws prevented Weldon from bringing legal action against anyone without the support of her husband, this barrier lifted when Parliament passed the *Married Women's Property Act* (1882).⁸¹ Prior to the legislation and following the advice of Reade, Weldon campaigned for lunacy law reform through pamphlets and lectures. In addition to her newspaper article, "Worse than the Bastille," Weldon began delivering lectures on her experience in 1879 and published them in *How I Escaped Mad Doctors* in 1882.⁸² However, the new legislation wholly altered Weldon's position, and she purchased a copy for study in 1882.⁸³ Under the *Married Women's Property Act* (1882), a married woman no longer needed to be joined by her husband as a plaintiff in a civil action but could proceed independently, as if a femme sole.⁸⁴ After two years of preparation, Weldon brought actions relating to the attempted committal against Drs. Winslow, Winn, Rudderforth, Semple, as well as de Bathe and Neal. Her actions proved that, without the buttressing force of the coverture, the lunacy laws did not protect so well the men who had misused them.

Weldon's first case was against Dr. Winslow, whom she sued for libel, trespass, assault, and false imprisonment. The case was heard three times, and the difference in the judgments illustrates the divergence of opinion regarding the rights of married women even in the face of the new legislation. Baron Huddleston, presiding over the first court to hear Weldon's case, found her non-suited after hearing the evidence against Winslow.⁸⁵ Contrary to Baron Huddleston's finding, Justice Manisty, on appeal, decided that there must be a new trial. He outlined a number of issues that deserved the court's attention, including the involvement of the

⁸⁰ "Lunacy Law Reform: The Power of the Keys," (1879) 1 British Medical Journal 245 at 245-6.

⁸¹ *Married Women's Property Act, 1882*, (UK), 45&46 Vict c 75.

⁸² A Owen, *The Darkened Room*, *supra* note 65 at 275.

⁸³ E Grierson, *Storm Bird*, *supra* note 66 at 202.

⁸⁴ Despite the clarity of the Act, Dr. Winslow challenged Weldon's right to sue. However, the Court of Appeal ruled that a woman could sue for torts done to her before the passing of the *Married Women's Property Act* (1882) without joining her husband and damages and costs were for her separate use: *Weldon v Winslow* (1884) Law Reports, QB Div Vol XIII, 785.

⁸⁵ *The Times*, March 15, 1884.

proprietor of the asylum to which Weldon was to be committed in selecting the certifying doctors, the independence of the certifications, and the fact that Dr. Winslow filled up the Order. Justice Manisty was vehement in his comment on the case: "it is revolting to one's sense of right that merely because the person has some strange or eccentric ideas therefore she is to be shut up for life."⁸⁶ On this recognition of the import of Weldon's case, the action against Winslow proceeded.

The Winslow case shows that the effect of the lunacy laws was often to protect those who used them rather than those whom they used. Winslow's defence - successful in the first instance - was that all of his actions were done following the provisions in the lunacy laws. He acted under the authority of an Order and two Medical Certificates and, therefore, had a complete defence to Weldon's allegations. However, at the second trial the manner in which the Order was filled up and Dr. Winslow's involvement in arranging the certifying doctors as proprietor of the asylum had a great impact on the jury's decision. At the centre of the case was the foundation for Weldon's committal: Dr. Winslow took Henry Weldon at his word about his wife, and he did not allow Weldon to respond to the allegations against her. Weldon underlined this point in the presentation of her case: "Why did you believe him more than me? Why did you not think he was under delusion? Did you ask for any proof that I was his wife?"⁸⁷ This line of questioning and Dr. Winslow's inadequate response made his gendered assessment of sanity beyond doubt.

When the law afforded Weldon the opportunity to present her case before a jury, it found in her favour. While the law could not put Weldon's sanity on trial in these actions, it was integral to her case and the judgments. In this way, Weldon appropriated the privilege of a *commission de lunatico inquirendo* retroactively. However, the nature of the civil jury was such that males still judged Weldon rather than her peers. The introduction of the *Married Women's Property Act* (1882) changed the manner in which the lunacy laws would treat married women in the future; however, Weldon's actions also proved that married women could use it to right some of the wrongs that its absence had caused in the past. According to the jury, motives other than the interests of medicine and justice had guided Dr. Winslow's conduct. They awarded Weldon £500.

The press also gave great attention to Weldon's case against Dr. Semple. Weldon charged that he was guilty of trespass, had completed the Medical Certificate falsely and maliciously, and that his examination of her was not in accordance with the 1853 *Lunacy Act*, requiring examinations to be separate and personal. Evidence that Drs. Semple and Winslow were old friends re-enforced the allegation that Dr. Semple had not been objective in his assessment. The pair had

⁸⁶ *The Times*, April 9, 1884.

⁸⁷ *The Times*, November 28, 1884.

operated together before: of the 440 patients admitted to Dr. Winslow's two asylums between 1866 and 1884, Dr. Semple had signed Certificates for forty-five.⁸⁸ Despite the number of Medical Certificates that Dr. Semple had signed for Dr. Winslow, he testified that it had not occurred to him to ask those who knew Weldon about the state of her mind.⁸⁹ Only the assessment of her husband, who had not seen her for three years, was of consequence to him, supplemented by that which he gleaned from his fifteen-minute examination.

By calling the Commissioner in Lunacy as a witness in the Dr. Semple trial, Weldon put the adequacy of the laws themselves to a test. The Commissioner admitted that under the lunacy laws the Commissioners in Lunacy had no right to interfere until the law confined someone in an asylum. Accordingly, the proprietor of an asylum did not have to give notice of a committal until a person was in the asylum. The situation was then in the purview of the visiting Commissioners. However, the previous assessment of the patient's sanity increased the difficulty of getting out of an asylum once put in it, as Reade illustrated in *Hard Cash*, because the preconception of insanity tainted the visiting Commissioners' assessment. The Commissioner also testified that Weldon's situation -- a committed, but sane, wife -- would not have earned any special treatment or review by the visiting Commissioners.

The jury found overwhelmingly in Weldon's favour, awarding over £1000 in damages. The decision was unequivocal: Weldon was not insane; she was not a person whom the law should detain; the examination was colourable in its satisfaction of the statute; she did not make the statements recorded on Dr. Semple's Certificate; Dr. Semple knew that the statements were untrue when he signed the Medical Certificate; he did not use due and reasonable care or make reasonable inquiries; he did not act bona fide; there was no separate examination; he did not believe honestly that he was acting within the provisions of the *Lunacy Acts*; he signed the Certificate from some sinister motive. It was a grand legal vindication.

Despite Weldon's legal success, the attendant publicity was her greatest victory against the lunacy laws.⁹⁰ By conducting her cases, handling them competently, and defeating learned counsel, Weldon made a mockery of the laws and medical profession that would have had her committed. This was a woman, sane and intelligent enough to defeat trained counsel, whom the medical profession had declared a lunatic and whom the lunacy laws would have confined to an asylum. Weldon made the public love her. A number of London papers, most notably *The*

⁸⁸ E Grierson, *Storm Bird*, *supra* note 66 at 213.

⁸⁹ *The Times*, July 16, 1884.

⁹⁰ Weldon declared the principle object of the actions was to "express the abuses of the Lunacy Laws": *The Times*, March 14, 1884.

Times, followed her case closely and she was the darling of reporters. *The Times* and *Chronicle* reported laughter in the courts at her wit from both audience and judges, a response never recorded in reaction to any of her defendants' comments or questions. Her courtrooms overflowed and the crowds outside were "all prepared to cheer their heads off for this radical Portia who had come to judgment."⁹¹ Like Alfred Hardie, Georgina Weldon used the power of publicity.

While Weldon had much success in her crusade against the lunacy laws and the medical profession, the legal community circumscribed the glory of her work. The *Law Times* heralded a high profile *commission de lunatico inquirendo* – held just when Justice Manisty was granting a new trial against Dr. Winslow – as displaying the difficulty in getting anyone declared insane under the lunacy legislation.⁹² In the opinion of *The Law Times*, proving a man insane had become a labourious and expensive process. In contrast to Weldon's case, *The Law Times* noted "the difficulty of establishing insanity within the terms of the Act, even with the alleged lunatic showing at least partial derangement."⁹³ However, there was no such difficulty when a woman was involved. Regarding men, *The Law Times* agreed with the notion that "when the facts for or against insanity are collected, laymen are as competent to draw from them as professional men."⁹⁴ It was entirely different for married women; there was no judge or jury – simply the Order and Medical Certificates.

The Reform of the Lunacy Laws

In 1890 Parliament reformed the entirety of its lunacy legislation. The *Lunacy Act* (1890) created a system to prevent abuses in a way that the piecemeal changes preceding it could not. Proprietors could receive private patients who had not been found insane by an inquisition only under an order of judicial authority; husbands and wives could no longer make such an order.⁹⁵ Parties obtained this judicial order on private application by petition accompanied by a Statement of Particulars and two Medical Certificates on separate sheets of paper. If possible, the patient's ordinary physician was to sign one Certificate. If judicial order found the person insane, then the petitioner -- or someone appointed by the petitioner -- had to visit the lunatic every six months.⁹⁶ In this way, the persons who committed lunatics could not abandon them completely. Granting a judicial order required judicial review of the

⁹¹ E Grierson, *Storm Bird*, *supra* note 66 at 209.

⁹² The Lunacy Commission assessed the sanity of George Gilbert Scott.

⁹³ *The Law Times*, April 19, 1884 at 441.

⁹⁴ *The Law Times*, April 19, 1884 at 442.

⁹⁵ *The Lunacy Act (1890)* 53 Vict c 5.

⁹⁶ *Ibid*, s 4(3).

allegations in a petition, Statement of Particulars, and Medical Certificates.⁹⁷ If the information did not convince the judicial authority, then he could visit the person and decide the situation.⁹⁸ All of this was to be done in private.

By legislating that no more lunatic asylums were to be built or old institutions enlarged, Parliament signalled that madness was no longer a growth industry. This enactment signals Parliament's determination to halt the trade in lunacy. Madness was no longer a growth industry. While the *Lunacy Act* (1890) put an end to the lunacy industry, the decline began with the introduction of the comprehensive *Married Women's Property Act* (1882). The advent of this type of equality in the legal status of men and women meant that no longer could husbands mistreat their wives through the lunacy laws without the possibility of repercussions. The legislation also made it possible for married women to request commissions de lunatico inquirendo to assess their sanity.

CONCLUSION

Throughout the nineteenth century modification to lunacy laws followed public exposure of their failings. Popular literature and the press were crucial in exposing the abuses that medicine and men perpetuated against women and that the law of coverture hid. In this way, fiction gave a voice to views that without it had no way of being heard. By the 1890 reform of the lunacy laws, it was evident that medicine could not provide the cure for mental illness that it offered at the beginning of the asylum period. As the criticism reached a climax, the market in lunacy entered a rapid decline. This market had been based on women, because the law had not protected them and the law would not allow husbands to dispose of them in another way. In fact, the lunacy laws, in conjunction with the coverture laws, offered an alternative more profitable than the modern divorce, if husbands were so inclined. Husbands could gain various degrees of freedom from their married lives, as illustrated by Edward Rochester's and Sir Michael Audley's examples and Henry Weldon's aspiration. Through the laws, husbands could also keep their wives' fortunes while approximating freedom from married life, in Rochesterian form. If their wives did not bring a fortune to the union, committal might still save their pockets, as per Henry Weldon. Finally, if a husband were met with the extreme circumstance of Sir Percival Glyde, the lunacy laws would still accommodate. As literature and the cases illustrate, the motivation for committing wives was most often avarice and eliminating the presence of an embarrassing wife. As such, it was of no real consequence that the laws prohibited remarriage: a husband could achieve that which he wanted most with a simple "madhouse divorce".

⁹⁷ *Ibid*, s 6(1).

⁹⁸ *Ibid*, s 6(2).