

Introduction: civil law and madness in transatlantic context

The madness of James B.

From the early modern period to the First World War the importance of the civil law in the history of madness was dramatically played out in the life experiences of countless English and American subjects and citizens. In the case of James B., the entanglements of civil law and madness began with his first major employment with his uncle's diamond import company. In 1875, by the age of twenty-two, James B. had sufficiently impressed his uncle to be put in charge of the company's office in London, England. Just before he moved to London, he was married to Carrie B. Soon afterwards the couple had their first and only child. At a certain point in London, perhaps from the pressures of a new family and from being in charge of the London branch of his uncle's diamond import business, James B. began to drink heavily. According to James B., he was recalled to New Jersey from London in 1891 after correspondence between his wife and his uncle in which Carrie stated that she could no longer live with James on account of his heavy drinking. James B. freely admitted that he was also suffering from 'nervous depression', and that he had consented, at the request of his uncle, 'to go to a retreat, and remain until [he] was better.'¹ However, the next five years of James B.'s engagement with mental health institutions, and with the New Jersey civil courts, were marked by controversy and acrimony.

The details of James B.'s life, and the context of his mental troubles, are made available through civil legal documents of the New Jersey Court of Chancery. A lunacy trial was filed against him in July 1893. This civil trial in lunacy, launched against James B. by his wife, found him to be *non compos mentis* – mentally incapable of governing himself

or his property. James B. fought back against the decision of the civil court by attempting to traverse, or overturn, the verdict of *non compos mentis*. Together, these legal proceedings created over six hundred pages of documentary evidence. The verdict of the twelve 'good and lawful men' summoned as jurors to the trial was that James B. was 'of unsound mind' with 'no lucid intervals'. The proceedings of the trial were transmitted to the Orphans Court, whereupon guardianship arrangements were made, placing James B.'s wife in charge of his person and of his considerable income, valued at \$200 per year, and fixed property of about \$28,000.

One year and one month after this verdict, in August 1894, James B. filed for a traverse (a new trial to re-examine his mental state) in an attempt to regain his legal status as a sane man and to take back control of his property. At this trial, James B. claimed that, upon returning from London, he had taken the 'Keeley cure' in Philadelphia, which cured him of his drinking habit. However, still suffering from a 'nervous depression', James B. had consulted Dr Banker, who recommended that he start taking 'bromide of soda or sodium' to help him sleep. Despite James B.'s concerns about becoming addicted to this new substance, his doctor reassured him that the chances of this happening were remote. Shortly thereafter, he became addicted to bromides, and it was at this point that he agreed to his uncle's request that he find a retreat in which to recover. But, James B. claimed, 'I was decoyed to [an] asylum after I had consented to go to a retreat, had consulted with a doctor about it; under the pretext of taking me to such a place for inspection, he landed me like a felon into the asylum.'² The asylum, to which James B. was committed on 7 May 1893, was the publicly funded New Jersey Morris Plains Lunatic Asylum. It was during James B.'s five-month stay at the Morris Plains asylum that his wife launched the lunacy trial against him. In his trial of traverse, James B. testified that he had not been made aware of the original lunacy trial proceedings and thus had had no ability to defend himself against the accusation or the verdict. Upon his release from the Morris Plains asylum, James B. was admitted to the private Long Island Home at Amityville.

The trial of traverse was largely a consideration of whether or not James B., who was originally diagnosed with paresis when he was committed to the Morris Plains asylum, could have sufficiently recovered from this condition to take back control of his person and property. Opinion on this matter was divided among medical professionals, and

these divisions were further exacerbated by the tough questioning of well-paid lawyers acting on behalf of James B. and on behalf of his wife. For instance, Dr Orville Wilsey, the physician in charge of the Long Island Home at Amityville, argued that ‘no case of paresis ever recovered yet. Once to have paresis is always to have it until you die, although perhaps frequently there are remissions when the disease is not as marked or is not making rapid progress as it did before ... I think [James B.’s] is a case of paresis passing through a remission where the mental symptoms of dementia and loss of will power are most marked.’³ Mr Hardwicke, James B.’s lawyer, was so aggressive in his questioning of Dr Wilsey’s expertise in the mental condition of paresis that the Master in Court intervened to caution the lawyer. Hardwicke countered that he wanted ‘simply to show by this witness that he keeps an asylum where patients are put by relatives in order to get their money and by wives to get rid of their husbands.’⁴

Despite these kinds of contentious comments, characteristic of most of the trial proceedings, most medical witnesses agreed that James B. suffered from paresis. What was not so clear about James B.’s condition, until Dr Edward Spitzka gave his testimony towards the end of the trial, was that James B.’s paresis was brought on by syphilis. When asked by Mr Guild, the lawyer acting on behalf of Carrie B., ‘what the supposed or claimed nature of [James B.’s] malady’ was, Spitzka replied, ‘I found out.’⁵ When pressed by the lawyer about what Spitzka had found out, the doctor replied, ‘There is a lady present [in the court room]; of course it was aggravated by intoxicants.’⁶ Like most of the other medical experts on the witness stand, Spitzka concluded: ‘I should think [James B.] was able to mind his own affairs. I might not counsel him to rush into feverish activity, but in regard to the ordinary every-day affairs of business, I see nothing at all objectionable to his entering into them.’⁷

Yet, the weight of the long and drawn-out testimony of the trial of traverse did not convince the Special Master in Chancery, Frank Bergen, that James B. had ‘sufficiently recovered to make it proper to give him complete control’ of himself and property. On 18 August 1894 the Master declined James B.’s attempt at traverse. For James B., this was clearly not acceptable because, in his opinion, ‘my wife is ... a very strong-minded woman, and I have always had a great respect for her, but she is very determined, and I am very determined, and we neither of us like to yield, and, under such circumstances there will be times when there is

friction when neither of us wants to give in.⁸ True to his remarks, through repeated appeals to the Special Master in Chancery, by 12 March 1898, James B. finally regained full control over his property and person.

In many respects, the civil trials of James B. relating to his mental state encapsulate key aspects of this book. His increasing mental trouble in London, and his return to the town of Elizabeth, New Jersey, underline the transatlantic nature of lunacy investigation law. This body of law that encompassed trials in lunacy, chancery court proceedings, proceedings in guardianship and trials of traverse had its origins in fourteenth-century England. Its development in England included its successful migration across imperial pathways to several colonial and post-colonial contexts, including New Jersey. James B.'s five-year engagement with lunacy investigation law, from 1893 to 1898, came towards the end of the real influence both in England and in New Jersey of this legal response to madness – a period that marks the end point of this study. His trials also highlighted the melding of lunacy investigation law with various medical responses, including those from physicians, asylums and specialty institutions for the mentally unwell. The ability of James B. to use traverse proceedings to challenge the verdict of *non compos mentis* also bore witness to the enduring legal principle, grounded in the civil law of lunacy, that those considered insane had the potential to recover their mental faculties and to regain control over themselves and their property. Finally, the detail provided by evidence from legal investigations into the madness of individuals like James B., both in England and in transatlantic settings like New Jersey, allows for a close reading of the importance of civil law in the response to madness, and of the complex dynamics of family and community in this civil legal process.

This book examines civil law responses to madness in England and in the North American territory of New Jersey. In England, by the eighteenth century, the law governing trials in lunacy had become a sophisticated legal response to those among the propertied classes who suffered from madness. This response included the famous *writs de lunatico inquirendo*, the investigations into the mental state of individuals by trial (often with a full jury), the participation of lawyers, judges and witnesses in these trials and the establishment of a tradition of precedent which Lord Chancellors drew upon in their considerations of what madness was and how it should be dealt with. A trial verdict of *non compos mentis* resulted in the establishment of

guardianship both for the individual deemed legally mad and for his/her property.

As Akihito Suzuki has pointed out, there were over three thousand lunacy trials in England between 1660 and 1853.⁹ This bears some statistical testimony to their importance but does not, as Suzuki notes, address how these trials also permeated English society's understanding of the problem of mental breakdown.¹⁰ This book shows that the development of this body of law was central to understandings of and responses to madness in England over several centuries, before, during and after the emergence of the large public asylums of the nineteenth century. Lunacy investigation law helped to structure approaches to madness among England's elite, but its reach was broader than that. By investigating the evidentiary fragments of this legal process that have been left behind, largely through a study of case reports, a sense is gained of English familial and community approaches to madness, especially for the eighteenth and nineteenth centuries. So too is the extent to which familial and community understandings of madness were structured around the civil law in England over a considerable period of time.

Next, the book considers how lunacy investigation law was transplanted into the colonial and post-revolutionary context of New Jersey. Like other English institutional and cultural imports, the law of lunacy investigation was successfully adopted into the colonial contexts of North America and elsewhere.¹¹ Drawing on a large evidentiary base of lunacy trials and other legal documents for New Jersey, it is possible to study in detail the development of this law. Lunacy investigation law planted deep roots in New Jersey, developing, from the mid-eighteenth century to the end of the nineteenth century, into the most important formal response to madness, not just for the well-to-do but also for families across the economic spectrum. In so doing, it formed a major force both in the determination of madness and in the response to it. Furthermore, the largely intact and extensive New Jersey lunacy trials often contain detailed accounts of madness that allow for a thorough investigation into the ways in which witnesses described madness and how they reacted to it at the local level. Although these rich testimonials to madness can be studied on their own for what they say about everyday understandings and responses, I argue that they are best considered as closely tied to the legal process of lunacy investigation. Civil law and custom were connected in important and, at times, surprising ways in New Jersey,

and their relationship is closely considered in this book. Finally, the archived lunacy trials available for study were produced before, during and after the institution of the asylum was introduced in New Jersey. This allows for an examination both of the relationship between lunacy investigation law and asylum development and of how neighbours and family members of the mad – and sometimes the mad themselves – responded to the introduction of the asylum as an alternative to care in the community.

Madness, the asylum and the family

A primary aim of this book is to show that the focus on lunacy investigation law over a long period of time, and in transatlantic context, adds to historical understandings of the relationship between madness, the family and the asylum. As far back as Andrew Scull's 1979 book *Museums of Madness: The Social Organization of Insanity in Nineteenth-Century England*, the crucial relationship between the family and the asylum was acknowledged, although not explored in detail.¹² For Scull, the relationship between asylum development and family transformation formed part of his broad analysis of changes in the social relations of capitalist production, the professionalisation of psychiatry and the social reform movement in Britain. More specifically, the transition from the old paternalist social order to a fully capitalist social system 'destroyed the traditional links between rich and poor' while, at the same time, 'sharply reducing the *capacity* of the lower orders to cope with economic reverses'.¹³ Scull argued that 'while the family-based system of caring for the insane and other types of deviants may never have worked especially well', these changes in capitalist social relations probably left it 'functioning particularly badly'.¹⁴ Under these circumstances, the asylum was a possible solution for individuals who could no longer be cared for by their families.¹⁵

In several books and articles from the late 1970s to the early 1990s, the study of the relationship between the family and the asylum gave more sustained attention to specific geographical contexts and to specific factors in the disruptions to family dynamics that prompted the institutionalisation of the insane. These scholars looked between the broad lines of capitalist transformation, industrialisation and modernisation to see what, in specific locations of the transatlantic world and in specific

social strata of society, motivated the impulse to asylum committal. This, in turn, led to the investigation of hitherto undiscovered primary sources for investigation and to important alterations to the understanding of the family/asylum relationship. In many respects, this new scholarship challenged earlier accounts and, in so doing, intensified historiographical tensions as to the asylum/family relationship. For example, John Walton's 1979 article on asylum admissions in Lancashire, England attempted to nuance historians' earlier claims about the asylum.¹⁶ Walton described Lancashire as a county that, at mid-century, was home to traditional agricultural practices (in the north), robust urbanisation and industrialisation (in Manchester and Liverpool) and an important area of mid-sized textile towns. Drawing on the work of labour historians and on his own analysis of the relationship between asylum admission and working-class migration patterns, Walton concluded that 'large cities whose growth was fuelled by long-distance migration, and whose inhabitants lacked the solidarity which soon arose from shared work experiences and, perhaps, a disciplined industrial environment, were generous providers of lunatics for the new custodial institutions.'¹⁷ On the other hand, 'in the smaller towns and industrial villages, where kin and migrants from the same village were accessible and the workplace built up a supportive friendship network of its own, the working-class family was better able to deal with the problem of what was coming to be seen as insanity than it had been in a countryside dominated by scattered smallholdings.'¹⁸ As Walton suggests, this detailed examination of admission practices in Lancashire indicated the need to pry deeply into the specific contexts of social and economic development in order to see what forces of capitalism were fuelling asylum growth. Moreover, in this sort of analysis, understanding changes in the family economy and structure became essential to understanding asylum development. The working-class were no longer seen as an amorphous mass drawn to a state response to madness over which they had little or no control. The concept of agency among the working-class now formed part of the family/asylum equation.

Richard Fox's 1978 examination of madness and asylum development in turn-of-the-century California further challenged earlier arguments about the asylum/family relationship in the context of capitalist development by arguing against any simple equation between the family's capacity to care and the twin processes of urbanisation and industrialisation. Fox

pointed out that the city was, in fact, 'a center of ethnic, religious, and familial groups that have preserved for many residents some of the organic, personal relationships typically attributed to rural living alone'.¹⁹ Moreover, Fox believed that some of his revisionist colleagues made the mistake of assuming that 'institutions [like the asylum] are imposed by that elite or that society upon a passive, malleable "lower class"'.²⁰ In Fox's account, families (and community officials) made use of the asylum on their own terms in order to deal with people who 'seemed to threaten family stability or public tranquility'.²¹

By the mid-1980s, interpretive battle lines were further drawn by a drifting of the perspectives of madness studies away from a respect for broad structures of power, towards so-called complexity theory, and/or towards more sustained attention to the micro-powers of everyday life. Also, the concept of working-class agency now formed part of the family/asylum equation. This nuanced approach to the relationship between the family and the asylum is exemplified in Mark Finnane's path-breaking 1981 study, *Insanity and the Insane in Post-Famine Ireland*. Finnane devoted a whole chapter of his book to the 'contexts of committal' of the insane to Irish state asylums. In this chapter he used institutional records to draw a picture of patient characteristics (another feature of these studies of the late 1970s and 1980s), noting that there were noticeable regional variations in the use of the asylum. Finnane suggested that the higher usage in the western seaboard of Ireland reflected a region 'fragmented by the two-fold impact of emigration and a decline in marriage' as a result of the famine. More significantly, Finnane examined several individual committal cases to assess how family conflicts 'were translated into forms of madness'.²² He concluded that 'those committed to the asylum, could as equally be victims as dangers within the family structures. Some threatened violence, some even used it. But it was also the case that the insane were the objects of violence, particularly if they were women. And the lunacy committal was in many hands an instrument of domination, to reinforce a position of power in the family or an expectation of certain behaviour'.²³ Moreover, towards the end of the nineteenth century the use of the asylum by families was also 'bound up with a set of cultural expectations that the asylum was the appropriate place for those who were "out of their mind"'.²⁴

For Finnane, this aspect of the study of madness – the family dynamics precipitating asylum committal – was essential to a full understanding

of how 'the asylum's history reflected the realities of social power – whether manifested in the priorities and preoccupations of national and local politics, in professionalism [or] in family life.'²⁵ In this formulation of the relationship between the family and the asylum, the asylum becomes 'an institution whose role and function was mapped out by a lengthy process of popular usage and custom as much as by the legal and financial imperatives which the state erected around it.'²⁶ In bringing the micro-power politics of familial relationships into the context of asylum development, Finnane was envisioning not so much a *layering* of social powers along professional and class lines, as had earlier revisionist writers, but, rather, a *web* of social powers that made the decisions of ordinary people, including those who committed and those who were committed, crucial to the success of asylum development. The working-class/popular classes/masses weren't merely 'done to' in this analysis – they were active in the domestic responses to madness and to asylum development.

The work of Fox, Finnane and Walton led to a flurry of research that devoted considerable attention to the familial contexts of committal. This literature further enhanced our understanding of the importance of class, gender and power within families to the development of the asylum. At the same time, these arguments in favour of an even closer scrutiny of the family/asylum nexus profoundly altered interpretations of the wider analysis of power. For example, in her 1984 exploration of the Pennsylvania Hospital for the Insane, Nancy Tomes demonstrated how this private hospital's 'patrons' were at the centre of asylum development. Tomes probed pre-committal treatment strategies within families; the specific familial dynamics that eventually led to asylum committal as a last resort; and the influence on psychiatric practice of families' perceptions of insanity and of their concerns about the asylum. This analysis led her to conclude that 'asylum medicine reflected a shared consensus [between families and asylum doctors] regarding the origins and treatment of mental disorders.'²⁷ For families with means, like those whose members predominated at the Pennsylvania Hospital for the Insane, Tomes suggests that a combination of the growing 'cult of domesticity', along with a concern about the disorder being created by 'complex modern society', may have led to decreasing tolerance for domestic care of the insane and an expansion of the definition of insanity.²⁸ Similar conclusions were drawn by historians assessing the history of

public asylums designed for a more mixed clientele, or exclusively for pauper patients.²⁹

The focus of these monograph studies on family/asylum connections was reflected in a growing article literature. Scholars on both sides of the Atlantic, like Mary Ellen Kelm, Wendy Mitchinson, Patricia D'Antonio, Geoffrey Reaume, Patricia Prestwich, Richard Adair, Joseph Melling and Bill Forsythe, Terry Nootens, Marjorie Levine-Clark and David Wright have tackled the relationship between family and asylum development, further positioning decisions to commit within specific geographic, economic, cultural and social contexts.³⁰ Migratory patterns, urbanisation, family structure, work, ethnicity, gender and institutional proximity were all factors which, these authors discovered, could combine at specific historical conjunctures to promote asylum growth. In many cases, the influence that these historians saw exerted by the family extended from pre-asylum management, through the committal process right to discharge and (in certain cases) to readmission.

The sheer volume of this literature has shifted attention 'downwards' from the aspirations and fears of state officials, psychiatrists and middle-class reformers, to the motivations and circumstances of those who cast forth the asylum patient. Notwithstanding important nuances in individual contributions to this growing body of work, in general it considered the asylum to be as much the product of family agency as it was the product of parliamentary or professional fiat. Moreover, for many authors, nineteenth- and early twentieth-century asylum medicine incorporated the diagnoses of families upon whose accounts psychiatrists relied heavily in the creation of their patient records and disease nosologies.³¹

Linking micro or case studies into broader contexts of social and political power is indeed a difficult task. But, as much of the above-cited literature demonstrates, many who write this sort of history do, in fact, recognise power differentials, despite their focus on the agency of families and communities in the response to madness and the decision to commit. Moreover, these studies are now numerous enough to be read for what they *do* reveal about 'imbalances of power' among state officials, mad-doctors and family members, among family members, and between family and community. One of the aims of this book is to show that a more sustained consideration of what many scholars are writing about at the local level – changing family dynamics; alterations in family structure in the face of developments in capitalism; family decisions

about asylum committal and discharge; familial and community practices outside of the asylum's sphere of influence – can fundamentally alter the ways in which we consider the linking-up of power and madness in historical context at the micro and macro levels.

The importance of lunacy investigation law

Part of that task for this book is to consider the under-researched civil legal response to madness (a response that certainly was, in large measure, a structured understanding of madness) and the important place that it held in the management of perceived irrational behaviour. Including the role of lunacy investigation law as an integral component of the historiographical mix certainly alters our understanding of the history of madness. For example, as in the case of James B. outlined at the beginning of this chapter, although the asylum was important to many who experienced mental troubles in the Anglo-transatlantic context, this institution was not the principal mechanism over the longer *durée*. That mechanism was lunacy investigation law.

The influential body of lunacy investigation law on both sides of the Atlantic needs to be considered much more seriously in terms of how it structured understandings of and responses to madness. We need to understand the law's development over time, communities' and families' response to it and their strategic manipulations of the law to suit their own needs. James B.'s case, and the hundreds of other cases that form the basis of this study, do clearly confirm many aforementioned historians' arguments about the close connections between asylum committal and family dynamics. James B.'s experiences included time in the publicly funded Morris Plains Lunatic Asylum,³² and at the privately run Long Island Home at Amityville, New York. His stay in both institutions was fraught with the machinations of family decisions about his mental state, conflict over family fortunes and debates among medical professionals about how to best respond medically to James B.'s condition. However, if we include attention to how the civil law in lunacy contributed to this dynamic in James B.'s case and in the cases of many others, the situation gets a great deal more complex.

Lunacy investigation law was influential in the determination of mental status for a great number of individuals. In England, the civil law played an important role primarily, though not exclusively, for wealthy people.

In New Jersey, the law was significant for individuals across a much broader socio-economic spectrum. Moreover, lunacy investigation law became a long-standing institutional response to madness, but operated in a way that was very unlike the asylum. It was a mechanism for shoring up familial property under threat and for establishing the care and management of the mad person on a more permanent basis, through specific legal steps. These included guardianship over the person deemed to be *non compos mentis* and guardianship over the property of that individual. This legal response had a much longer tradition than the asylum both in England and in colonial and post-colonial settings like New Jersey. By the time that the asylum came on the scene, families had been using the legal workings of lunacy law for decades and centuries, along with myriad other non-institutional responses that, as historians have noted, are much harder to recover.

While families did come to understand the civil law in lunacy as a means to shore up anxieties about family members whose behaviour was considered beyond the pale, this law also developed as a very public process, involving witnesses who were drawn from the community, jurors who were property-owning men, also from the community, and trials that were open to the public. This legal process established a 'community of understanding' about madness that deeply influenced how families and neighbours understood the problem, and the range of options that were available in responding to it, including, eventually, the asylum. Finally, embedded in lunacy investigation law over the entire period of its existence was the concept that a person found by trial to be insane could recover. With this in mind, the right of 'traverse', or the right to overturn the decision of the lunacy investigation of *non compos mentis*, although not often used, was always, technically, at the disposal of the individual. This recourse to traverse, used by James B. in an attempt to re-establish his status as mentally fit to govern himself and his property, needs to be considered as a powerful additional feature of the legal structure that affected the ways in which families in England and in North America responded to madness.

Getting out of the asylum

Much of the recent literature on the family and the asylum, and my research for this book on lunacy investigation law, points towards a

more radical reconceptualisation of the family/asylum relationship. This reconceptualisation suggests a 'decentring' of the asylum from pride of place in the responses to madness for much of the nineteenth century. This shift was anticipated historiographically by David Wright's landmark (and suitably entitled) article 'Getting out of the asylum: Understanding the confinement of the insane in the nineteenth century'.³³ In his synthesis of the substantial research on the history of the role of the family in asylum confinement that had been published prior to 1997, Wright offered a methodology with which to reconsider the family/asylum relationship. He advocated the use of nominal record linkage in the study of asylum records in order to reconstruct patient profiles, and a 'household economics' approach to get at the familial circumstances precipitating committal. Wright cautioned the would-be researcher to consider the changes in the family's *ability* to care for their alleged insane as well as its changing *willingness* to care.³⁴ Strikingly, he noted that although the asylum did become more 'important as the nineteenth century drew to a close ... the abundance of institutional sources, and the paucity of material on informal caring networks, should not mislead us into accepting uncritically the primacy of the mental hospital itself'.³⁵ For instance, just under half of patients in public asylums in Britain were institutionalised for twelve months or less, while many of these same patients had a recorded history of madness prior to their committal that had lasted for many months or years. Moreover, despite the growing asylum population in nineteenth-century Britain, government officials were convinced that many more mad people were being cared for and managed outside the walls of the asylum. This research suggested that the function of the family in the response to madness was alive and well, and running parallel to the development of the asylum response. This points to a more modest reassessment of the asylum's role as a singular response to madness. To Wright, this just made sense, as the lay public was unlikely to have 'cast off centuries-old cultural and popular ideas about insanity [and familial responses that went with them] when confronted by the medical gaze' of institutional psychiatry.³⁶ But a key set of questions remains. What exactly were these cultural and popular ideas about insanity, and what kind of less formal, if not routine, responses to madness did these ideas generate?

Wright's article presaged a momentum in family-centred/asylum-decentred perspectives on madness that assess the response to madness

through the lens of familial and community management and care.³⁷ This perspective is well developed in Akihito Suzuki's book *Madness at Home: The Psychiatrist, the Patient, and the Family in England, 1820–1860*, in which Suzuki discovers a 'domestic psychiatry' that 'existed and even flourished' at least for the more privileged members of Victorian English society.³⁸ Drawing on the work of historians of the middle-class English family, Suzuki argued that the cult of middle- and upper-class domesticity that developed in the face of the uncertainties and demands of political and economic change included an enduring 'flexible fabric of strategies' for dealing with the insane. Far from being wiped out by asylum growth, this 'domestic psychiatry' endured, at the same time that it profoundly influenced the nature of psychiatric medicine. Suzuki's findings, drawn largely from civil legal trials in madness, have been consistent with those of other researchers such as Thierry Nootens and R. A. Houston, who have been working with similar primary sources.³⁹

More sustained investigation into the decentering of the asylum, such as that provided by Akihito Suzuki in his book *Madness at Home*, also reveals certain analytical tensions and conundrums that are embedded in the historiographical consideration of the subject. Suzuki allows his powerful thesis about the development and perseverance of 'domestic psychiatry' among England's elites to pry open the door to major revision to the history of the asylum and of psychiatry. But he is reluctant to push the door open very far – perhaps, as he states, because the state of the field does not yet allow it. For Suzuki:

Although considerable nuances have been made to the chronology, dynamics, and causes of this momentous change [of asylum and psychiatric ascendancy], none has refuted the core thesis of the rise of the asylum and psychiatry in Victorian England. Nor do I intend to dispute it. It is true that the family became less frequently the locus of care for those recognized as suffering from mental disease, and the family's role in providing care and in organizing a therapeutic or controlling regime diminished during the course of the nineteenth century.⁴⁰

However, in the next paragraph Suzuki notes that 'caution is necessary', for 'historians have not so much verified as assumed the diminishing role of the family vis-à-vis that of the asylum and the psychiatric profession.'⁴¹ Moreover, citing the considerations of Wright and Bartlett, Suzuki states, 'we still do not know the number of men and women who were "recognised" as insane during the nineteenth century.'⁴² I would add

that we still do not know how these figures stack up against asylum and population statistics in given areas at given points in time. The collective weight of recently published literature focusing on madness and the family at the turn of the asylum era, including that of Suzuki, points to the fact that, for much of Britain and, in particular, North America, the lunatic asylum did not become the dominant response to madness, nor did it replace or undermine family and community care for the insane until well past the mid-nineteenth century.

This debate is partly resolved by recognising the great geographical diversity of the asylum's influence. In this book, the focus on England aims to establish the importance of lunacy investigation law, even in the face of an increasingly prominent private and public asylum system. For New Jersey, a more sustained focus of the book is the extent to which lunacy investigation law operated as the principal means by which the formal response and understanding of madness was structured (in the absence of any institutional response) until the opening of the New Jersey State Lunatic Asylum in 1848. Indeed, the numbers of asylum patients in the state were relatively low until well after the American Civil War. It may well be that the resort to lunacy investigation law helped to temper the appetite for asylum development in New Jersey and elsewhere. An equally likely scenario is that the successful migration of lunacy investigation law from England to New Jersey, and its development into an effective response to madness in what was a primarily agricultural society, rendered the asylum option less dominant for a longer period in this territory. Finally, as the trial of James B. suggests, the depth of detail provided by the testimonials of friends and family at the trials of lunacy in New Jersey reveal the rich repertoire of responses to madness at the local level. By mining the details of New Jersey lunacy trials, it becomes clear what some of the content of the 'centuries-old cultural and popular ideas about insanity' actually was, at least in this part of North America. These local cultural understandings and responses to madness are described in this book in order to further the argument that, when it arrived on the scene, the asylum was but one of many options to madness.

Madness and colonisation⁴³

A study that purports to trace the history of civil lunacy investigation law from its origins in England, through its migration into the colonial

setting in English New Jersey, and on to its continuing development in the post-revolutionary American state, requires some consideration of how the relationship between civil law and madness was tied to colonialism and empire. The transatlantic history of madness and civil law intersects with empire and colonialism in significant ways. First, the civil law of lunacy was, by definition, designed to test the mental state of those who were suspected of not being able to rationally manage either their property or themselves. This struck at the heart of property-holding English society over a considerable period of time. Despite major changes in the economic structure of England from the origins of lunacy investigation law in the 1300s until its decline in the late 1800s, this law remained important because it was situated at the axis of power, property and self-governance in England.

It is no surprise, therefore, that during the first colonial era England sought to reproduce the law of lunacy investigation in its colonial settings. The important relationship between lunacy law and colonialism was both practical and theoretical. Practically, this body of law was placed into the hands of colonial rulers by English authorities as a mechanism for dealing with propertied colonists who were considered mentally incapable of managing their property. If lunacy investigation law was of major significance to how madness was understood and responded to in England, its introduction and development into the colonial context of New Jersey was of even greater importance. In part, this was due to the fact that in colonial and post-revolutionary state contexts the law helped to structure the response to madness in a transatlantic world that was predominantly rural and that had not developed institutional responses to madness at pace with the private and public asylum system in the 'mother country'. The case of James B. shows that the colonial inheritance of lunacy investigation law persisted in New Jersey until at least the late nineteenth century.

At a more abstract, theoretical level, early exponents of the laws of *non compos mentis*, as well as some early eighteenth-century English legal intellectuals, drew heavily on the uneasy juxtaposition of the concept of *non compos mentis* with the rights (or lack thereof) of those peoples discovered in new lands who were judged not to have the intellectual capacity to govern themselves or the lands which they happened to inhabit. In particular, those newly discovered indigenous people without any concept of property or property ownership (as defined by English

legal tradition) were compared to English citizens who had become *non compos mentis* – both were in need of guardianship and protection by the English Crown. Indeed, this protection was considered (rather perversely for the former group) to be a natural right of rational rule. In this sense, the colonial extension of lunacy investigation law can be seen as an essential aspect of colonisation, for, as Diane Kirkby and Catharine Coleborne put it: ‘Law, the rule of law, was at the heart of the English colonial enterprise.’⁴⁴ Early protagonists of the imperial importance of the laws of *non compos mentis* thus rationalised the dispossession and guardianship of indigenous peoples who had no (western) concept of property with the same logic with which they rationalised the dispossession and guardianship of mad English colonists who had lost their mental capacity to govern their property. In ensuring that ‘new’ lands were being rationally organised, developed and inherited in the ‘new world’, where threats were being posed by ‘savages’ and mad colonists alike, lunacy investigation was an obvious colonial carry-over.⁴⁵

This early colonial connection between those considered naturally dispossessed of their mental capacity of property ownership and self-governance, and colonists in need of the long-standing traditions of lunacy investigation law in the event that they became *non compos mentis*, has a corollary in more contemporary periods of psychiatry and madness in a variety of colonial contexts.⁴⁶ In an editorial analysis of some of this work, Megan Vaughan notes that ‘in the new and burgeoning literature on the history of psychiatry and empire ... we are continually returned to this theme: the analogy (or for some, homology) between the alleged madness of colonialism and the madness of the mad.’⁴⁷ In this analysis, Vaughan notes that ‘colonialism’s severely disruptive effects upon the societies in which it developed created individual and collective forms of madness, the imposition of Western notions of mental illness through the establishment of psychiatric institutions labelled traditional behaviours and cultural practices of indigenous peoples as mad, and these precedents created complex and, at times equally challenging post-colonial relationships between madness and psychiatry.’⁴⁸

As Vaughan notes, for the most part, ‘the existing literature on psychiatry and empire concentrates on the history of institutions. This not only reflects the influence of Michel Foucault on historians of colonialism, but also, more prosaically it reflects the availability of

historical documentation. Institutions leave records; the day-to-day struggles of communities to deal with the problems raised by mental illness generally do not.⁴⁹

In its examination of surviving civil trial evidence in New Jersey, the research for this book allows for a reconstruction of such 'day-to-day' struggles. The book also places these examples within the context of structured responses to madness that predate the asylum by centuries. To be clear, this historical detail allows for an exploration of how New Jersey English white colonists (and their Dutch, Swedish and Finnish colonial predecessors whose offspring stayed on after English takeover) and, more especially, subsequent generations of their post-revolutionary kin, understood madness and how they responded to it day-to-day. By definition, the trial process that generated all of this extraordinarily rich evidence happened only when someone in New Jersey who was considered mad had some property at stake.

It was very unlikely that indigenous people during the period under study would have property under scrutiny in this manner. I have found no trial in which a member of the Lenape/Delaware First Peoples of the New Jersey region is the focus. This, as Peter Wacker states, is likely due to several factors resulting from two centuries of contact with Europeans:

A major point of contention between European and aborigine was the notion of permanent individual land ownership. Whites attempted, with success, to alienate Indian lands permanently, quickly, and with as little expense as possible. Generous quantities of rum were made available, often technically illegally, to hasten the process and through liquor as well as the lack of resistance to European diseases, the Lenape began to decline in numbers. Land alienation and the increasing tide of whites also served to encourage most surviving Indians to leave for the west. Those who remained, even though a reservation of sorts was provided for them, were generally treated so badly that they left in a body in the early nineteenth century.⁵⁰

The theoretical positioning of *non compos mentis* law as part of the justification for colonisation and the exercise of English imperial power over indigenous peoples did not mean that indigenous peoples in New Jersey would be subject to this law in a literal sense.⁵¹ However, this did not

preclude lunacy investigation law from playing its part in the broader ambit of Anglo North American colonialism.

Madness on trial: civil law and lunacy in a transatlantic world

This book takes a new approach to these historiographical considerations by developing a case study in the transatlantic history of madness with a focus on civil law. It elaborates the civil law's important role in the history of madness in England, the reconstitution of this law in English colonial settings and its development in the white settler society of New Jersey. This sustained view of madness in transatlantic context through the lens of civil law opens the door to reinterpretation. Chapter 2 of the book traces the history of lunacy investigation law from 1320 to 1890 in England. It demonstrates the longevity and the importance of this law. This legal overview is essential in order to illustrate how the law was structured and how it evolved over the centuries. The verdicts in these trials of *non compos mentis* were concerned with the mental incapacity to manage property and with the recognition of the need to appoint a guardian to keep personal and family property intact. The definition of madness was embedded in laws governing commissions of lunacy and guardianship. Included in this legal approach to madness was the appointment of someone who would oversee the care and management, as well as the material wellbeing, of those deemed to be *non compos mentis*. The law also provided for the restoration of control over property and person in cases where individuals could successfully convince the courts that they had regained their ability to control their property rationally. In this legal context, the response to madness was primarily concerned with providing for the rational control over property by removing it from the hands of those who risked compromising it through their irrational behaviour and, occasionally, by giving it back to those who had proved, some time later, that they could once more use it wisely. In this chapter, I argue that the development of lunacy investigation law for the preservation of property in the face of irrational behaviour was not incidental but, rather, central to the definition and response to madness for centuries in England. It was a socio-legal context for understanding and responding to madness that would eventually be situated in parallel with laws that signalled a growing emphasis on

institutional confinement and inspection in England and, later, in parts of North America.

Through an exploration of the content of specific cases, Chapter 3 assesses how claimants, defendants and lawyers in lunacy trials and Lord Chancellors occasionally challenged the definitions of insanity embodied in lunacy investigation law. The cases in this chapter encompass individuals who, during the course of the trial, were considered to be on the borderlands of madness – that is, they were understood to be mentally ‘weak’ and/or ‘incapable’, but not necessarily *non compos mentis* enough to fit neatly into the laws related to commissions of lunacy. The chapter shows how legal struggles around these more ambiguous cases further shaped the definition of madness both inside and outside the courts. The decisions of judicial authorities, along with other peculiarities of the chancery court, enabled Lord Chancellors greater latitude for settling cases in lunacy that were at the boundaries of madness. However, legal authorities were also challenged by the circumstances of some cases – ones, for example that included physical debilitation, eccentric behaviour or the challenges of old age – which made clear verdicts difficult to determine. The testimony of families and of other witnesses with conflicting views of an individual’s mental state further militated against clear-cut outcomes in these trials. An examination of these cases of indefinite mental state highlights the flexibility of lunacy investigation law. It also shows how legal authorities attempted, not always successfully, to shape the law to conform more closely to their legal outlook on madness.

Chapter 4 evaluates how families used lunacy investigation law as a strategic response to the unsettling circumstances created by the mad behaviour of their relatives. This included the management of the mad and their property, the safeguarding of inheritance and the regulation of marriage. The chapter shows how lunacy trials served as a powerful and enduring mechanism by which families of the mad attempted to reorder the disorganisation created by madness. However, the interventions of legal authorities in these trials, along with the competing interests of family members, did not always make the resort to lunacy investigation law as satisfying an option as families had hoped. On one level, the Lord Chancellors can be seen as the arbiters of this social and economic cohesion, the law of lunacy investigation being an imperfect legal instrument through which they attempted to impose their broad outlook. But these principles were at times inconsistent with the wishes of family

members who often had more specific pecuniary interests in mind. As late as the early nineteenth century, the principle of the 'king's conscience' was still guiding Lord Chancellors' outlooks on these cases. More specifically, Lord Chancellors prioritised the protection and wellbeing of those deemed *non compos mentis*. This, they argued, had always been the responsibility of the law. The protection of those found insane through commissions of lunacy included maintaining the integrity of the lunatic's estate, but not always in ways that met the interests of individual family members.

Chapter 4 also shows how lunacy investigation trials highlight the relationships of gender and class in England in the eighteenth and early nineteenth centuries. While the structure of English law made women unequal participants in these trials, they were far from invisible. Women participated at these trials as the subjects of investigations and also as witnesses. At various trials they appeared as the appointed guardians of the person and, sometimes, of the estate of those found to be mad; as the victims of opportunistic men who took advantage of their mental weakness; and, occasionally, as opportunistic women who took advantage of the mental eccentricities of others. While men dominated these legal processes and, for the most part, retained more economic power in their outcomes, at least as the subjects of lunacy trials they could also find themselves in the unusually weak position of having lost their male identity as figures of power and authority. Indeed, the finding of *non compos mentis* and the attendant lunacy investigation and guardianship processes guaranteed for these men a loss of male privilege and power. Although the law structured family fortunes in gender-specific ways, trials in lunacy highlight how madness could both affirm and complicate conventional relationships between men and women.

Chapter 5 highlights the ways in which lunacy investigation law shaped the management and care of the mad in England. This chapter argues that lunacy investigation law was the oldest institution that was, in theory, invested in the care and management of madness in England. Built into the law was the principle that the outcome of the trial process was supposed to protect and safeguard the person and property of an individual considered to be mad. This was achieved by appointing a committee to take guardianship of the mad person, and another committee to take guardianship of his/her property. The legal assumption that the mad individual could eventually recover shaped the responses of legal

authorities. The right of an individual found *non compos mentis* by lunacy trial to challenge and overturn this decision upon his/her mental recovery through a trial of traverse further attests to the assumptions about care and management upon which this law was based. Over the course of the eighteenth and early nineteenth centuries, in their attempts to uphold these principles of good management and caring, Lord Chancellors heavily influenced the course of the trials in a variety of ways in England. Sometimes the decisions of Lord Chancellors and other legal authorities were not in accord with the wishes of family members of the mad, whose motives were frequently at odds with the welfare and safekeeping of their mad relations. This tension between legal authority and families (and other acquaintances) over the course of trial processes frequently compromised the legal outcomes for those on trial for madness. Over the course of its long-standing influence, lunacy investigation law developed alongside a much wider context of understandings of and responses to madness. During the period that marks the focus of this chapter (1700–1830) mad-doctors and other medical practitioners were also forging their professional outlook on madness through the establishment of a mad-doctor profession and the creation of private madhouses. These mad-doctors, and other medical practitioners, also appeared as expert witnesses in some lunacy trials. In this chapter, the growth of lunacy investigation law is evaluated in relation to this broader professionalising medical context.

Chapter 6 begins with a consideration of how the transatlantic history of madness and civil law intersects with empire and colonialism in significant ways. Lunacy investigation law was seen as a suitable transplant into colonial settings such as New Jersey because this law fitted well with more general assessments of the role of law in the exercise of imperial power. The civil law of lunacy was, by definition, designed to test the mental state of those who were suspected of not being able to rationally manage either their property or themselves. It is no surprise, therefore, that during the first colonial era England sought to reproduce the law of lunacy investigation into its colonial settings, where a premium was placed upon the rational organisation of newly acquired property. The rest of Chapter 6 explains how this law was successfully ensconced in New Jersey, despite the region's tumultuous transformation from British colony to fledgling American state. The law of lunacy investigation was a very successful legal transplant, taking root in ways that could not

have been anticipated by those who had shaped the law in England. In New Jersey, the law applied to a much broader socio-economic group. It served as a formidable regulatory, managerial and caring mechanism for madness. This democratisation of the application of lunacy investigation law enabled it to play a major role in the determination of madness, its management and treatment in nineteenth-century New Jersey long after the establishment of an asylum option there.

Much as in the case of England, lunacy trials were an essential vehicle by which families in New Jersey attempted to sort out the disruptions to property and social relationships created by their mad relations. Unlike the English case reports, the extensive collection of hand-written manuscript lunacy case files in New Jersey includes, in many instances, court recordings of witnesses' testimonies, many of which are long and descriptive. This allows for a more comprehensive analysis of the social dynamics of law and madness, which is the focus of Chapter 7. In New Jersey, lunacy investigation law provided a legal scaffolding upon which families and communities could build responses to the challenges of madness – scaffolding that was shaped by legal tradition inherited from England, by customary use of the law over time in New Jersey, by the decisions of legal officials and by the public. In many cases, it served as a means of protecting those individuals experiencing mental troubles. At the same time, it allowed their families to shore up interests that were being threatened by their troubled family members. In some cases, these interests were not shared, and the unresolved tensions among family and community members over property and control of the mad are plainly evident. Overall, however, lunacy investigation law served a regulatory function not unlike that found in its transatlantic cousin, albeit in a context that allowed it to thrive in ways that it could not in England.

Chapter 8 argues that lunacy investigation law largely shaped antebellum New Jersey's response to madness. As in England, the legal process was used in many cases to safeguard the interests of the insane by ensuring that funds would be available for long-term care, to minimise the exploitation of the insane and to provide for the possibility of legal recourse for those who recovered their sanity. In this chapter, the New Jersey records are mined for details about the relationship between lunacy investigation law and other aspects of the care and treatment of the insane. Witnesses' testimonies offer insight about the ways in which families cared for the

mad at home, about the role of physicians and other caregivers and about other forms of rehabilitation established in the community. The focus here is on how these forms of care intersected with the civil law of lunacy. Lunacy investigation law was not just an important legal response to madness in New Jersey. Its long-standing influence at the legal and local levels knitted it tightly into the everyday understandings of and responses to madness in local communities in the state.

Chapter 9 probes the relationship between the well-entrenched legal process of lunacy investigation law – along with the customs of community care and understanding that revolved around it – and the lunatic asylum as it emerged as a purpose-built institutional response in New Jersey. A close reading of a sample of longer trials uncovers great detail about local views of the asylum and its role in the everyday decision making in the community about madness. These trials reveal a broad spectrum of attitudes toward the asylum – some negative, some ambivalent and some more positive. After its opening at Trenton in 1848, the New Jersey State Lunatic Asylum became an increasingly logical option to the difficulties posed by madness. Yet, the patient population of the new institution remained modest until the turn of the century. Moreover, patients who found themselves committed to the asylum in its early years were also subject to a range of alternative responses to madness. The detailed testimony of lunacy trials highlights the ways in which the asylum was integrated into the longer-standing civil law of lunacy, and into the customs of community management and care of the mad in New Jersey. This chapter also explains how the structure of lunacy investigation law was adapted in the mid-nineteenth century to the challenges posed by the asylum committal of individuals in difficult socio-economic circumstances. As the state's population grew and its economic base began to change, the relationship between the asylum and lunacy investigation law began to shift. While lunacy trials in their traditional form were still used in New Jersey (at least until as late as the 1893 trial of James B.) an alternative hybrid form of legal investigation into madness clearly signalled a change in the balance of legal and institutional responses in New Jersey. This hybrid legal mechanism, referred to as the 'order in lunacy', is examined and explained in order to consider the eclipse of lunacy investigation law in the later part of the nineteenth century.

The civil law was of major importance in the consideration and determination of madness in the transatlantic world over several centuries. In fact, the power of civil law in the history of madness cannot be over-estimated. Like any other formal regulatory mechanism, the civil law was entangled with prevailing attitudes about madness and the myriad responses to it emanating from medical, familial, community and broader cultural quarters. These entanglements, which are a focus of this book, serve as a reminder of just how complex the exercise of power in the face of madness can be. However, in order to begin to appreciate the complexities of civil legal power in the face of madness, the following chapter outlines the history of lunacy investigation law in England in broader strokes from 1320 to 1890.

Notes

- 1 New Jersey State Archives, Trenton (hereafter NJSA), Chancery Court, Lunacy Case Files (hereafter CC, LCF), Case of James B., 1893–8. The names of the subjects of court cases in lunacy have been made anonymous according to NJSA policy.
- 2 *Ibid.*
- 3 *Ibid.*
- 4 *Ibid.*
- 5 *Ibid.*
- 6 *Ibid.*
- 7 *Ibid.*
- 8 *Ibid.*
- 9 Suzuki, *Madness at Home*, p. 23.
- 10 *Ibid.*
- 11 Research into this legal colonial export, and its effects, is still in its infancy. However, it is clear that lunacy investigation law was operating in the North American colonies of Massachusetts, New York, New Jersey, Upper Canada (present-day Ontario), New Brunswick and Prince Edward Island. There is also evidence of an English version of lunacy investigation law operating in Jamaica, India and Australia. A French version of this law thrived in the colonial context of Quebec. For the law's importance in Quebec, see, A. Cellard *Histoire de la folie au québec de 1600 à 1850* (Montreal: Boréal, 1991).

- 12 A. Scull, *Museums of Madness: The Social Organization of Insanity in Nineteenth-Century England* (New York: St Martin's Press, 1979).
- 13 *Ibid.*, p. 34.
- 14 *Ibid.*
- 15 Similar analyses of the relationship between the family and the asylum can be found in other books written during the same period. See for example, K. Doerner, *Madmen and the Bourgeoisie: A Social History of Insanity and Psychiatry* (Oxford: Basil Blackwell, 1986), pp. 165–6, 71 and 291; D. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little Brown, 1971), pp. 70–8, 120–2 and 127.
- 16 J. Walton, 'Lunacy in the Industrial Revolution: A study of asylum admissions in Lancashire, 1848–1850', *Journal of Social History*, 13.1 (1979).
- 17 *Ibid.*, 18.
- 18 *Ibid.*
- 19 R. Fox, *So Far Disordered in Mind: Insanity in California, 1870–1930* (Berkeley: University of California Press, 1978), p. 6.
- 20 *Ibid.*, p. 9.
- 21 *Ibid.*, p. 77.
- 22 M. Finnane, *Insanity and the Insane in Post-Famine Ireland* (London: Croom Helm, 1981), p. 166.
- 23 *Ibid.*, p. 168.
- 24 *Ibid.*
- 25 *Ibid.*, p. 17.
- 26 M. Finnane, 'Asylums, families and the state', *History Workshop Journal*, 20:1 (1985), 136.
- 27 N. Tomes, *A Generous Confidence: Thomas Story Kirkbride and the Art of Asylum Keeping, 1840–1883* (New York: Cambridge University Press, 1984), p. 123.
- 28 *Ibid.*, pp. 126–8. For a similar analysis see C. Warsh, *Moments of Unreason: The Practice of Canadian Psychiatry and the Homewood Retreat, 1883–1923* (Montreal: McGill Queen's University Press, 1989), pp. 64, 71 and 91 and Chapter 6, *passim*.
- 29 E. Dwyer, *Homes for the Mad: Life inside Two Nineteenth-Century Asylums* (New Brunswick: Rutgers University Press, 1987), pp. 6, 86–7, 97 and 116; J. Moran, *Committed to the State Asylum: Insanity and Society in Nineteenth-Century Quebec and Ontario* (Montreal: McGill Queen's University Press, 2000), pp. 99 and 140. See also the excellent study by Catharine Coleborne, *Madness in the Family: Insanity and Institutions in the*

Australasian Colonial World, 1860–1914 (Hampshire: Palgrave Macmillan, 2010).

- 30 R. Adair, J. Melling and B. Forsythe, 'Migration, family structure and pauper lunacy in Victorian England: Admissions to the Devon county pauper lunatic asylum', *Continuity and Change*, 12:3 (1997), 373–401; M-E. Kelm, 'Women, families and the provincial hospital for the insane, British Columbia, 1905–1915', *Journal of Family History*, 19:2 (1994), 177–93; G. Reaume, 'Mental hospital patients and family relations in Ontario, 1880–1930', in L. Chambers and E-A. Montigny (eds), *Family Matters: Papers in Post-Confederation Family History* (Toronto: Canadian Scholar's Press, 1998), pp. 271–87; P. D'Antonio, 'The need for care: families, patients, and staff at a nineteenth-century insane asylum', *Transactions and Studies of the College of Physicians of Philadelphia*, 12:3 (1990), 347–66; D. Wright, 'Family strategies and the institutional confinement of "idiot" children in Victorian England', *Journal of Family History*, 23:2 (1998), 190–208; M. Levine-Clark, 'Dysfunctional domesticity: Female insanity and family relationships among the West Riding poor in the mid-nineteenth century', *Journal of Family History*, 25:3 (2000), 341–61; P. Prestwich, 'Family strategies and medical power: "Voluntary" committal in a Parisian asylum, 1867–1914', *Journal of Social History*, 27:4 (1994), 799–818; A. Cellard and M-C. Thifault, 'The uses of asylums: Resistance, asylum propaganda, and institutionalization strategies in turn-of-the-century Quebec', in J. Moran and D. Wright (eds), *Mental Health and Canadian Society: Historical Perspectives* (Montreal: McGill Queen's University Press, 2006), pp. 97–117; D. Wright, J. Moran and S. Gouglas, 'The confinement of the mad in Victorian Canada', in R. Porter and D. Wright (eds), *The Confinement of the Insane, 1800–1965: International Perspectives* (Cambridge: Cambridge University Press, 2003), pp. 175–222; J. Parle, 'Family commitments, economies of emotions, and negotiating mental illness in late-nineteenth to mid-twentieth-century Natal, South Africa', *South African Historical Journal*, 66:1 (2014), 1–21.
- 31 See Suzuki, *Madness at Home*, pp. 41 and 64; D. Wright, 'The certification of insanity in nineteenth-century England and Wales', *History of Psychiatry*, 9:35 (1998), 267–90. Not all historians of madness have been pleased with these reinterpretations of the relationship between the family and the asylum. See, for example, A. Scull, *The Insanity of Place/The Place of Insanity: Essays in the History of Psychiatry* (London: Routledge, 2006), pp. 109–11; A. Scull, *The Most Solitary of Afflictions: Madness and Society in Britain, 1700–1900* (New Haven: Yale University Press, 1993), pp. 362–74.

- 32 The Morris Plains Asylum was opened in 1876, in part to help take pressure off the overcrowded conditions of the state's first asylum, the New Jersey State Lunatic Asylum, which opened its doors in 1848.
- 33 D. Wright, 'Getting out of the asylum: Understanding the confinement of the insane in the nineteenth-century', *Social History of Medicine*, 10:1 (1997), 137–55.
- 34 *Ibid.*, p. 152.
- 35 *Ibid.*, p. 155.
- 36 *Ibid.*, p. 144.
- 37 See the articles in P. Bartlett and D. Wright (eds), *Outside the Walls of the Asylum: The History of Care in the Community, 1750–2000* (London: Athlone Press, 1999). For similar conclusions, see the introduction to P. Horden and R. Smith (eds), *The Locus of Care: Families, Communities, Institutions and the Provision of Welfare Since Antiquity* (London: Routledge, 1998); A. Suzuki, 'Lunacy in seventeenth and eighteenth-century England: Analysis of Quarter Session records, Part I', *History of Psychiatry*, 2:8 (1991), 437–56; A. Suzuki, 'Lunacy in seventeenth and eighteenth-century England: Analysis of Quarter Session records, Part II', *History of Psychiatry*, 3:9 (1992), 29–44.
- 38 Suzuki, *Madness at Home*, p. 3.
- 39 T. Nootens, *Fous, prodigues et ivrognes: familles et déviance à Montréal au XIXe siècle* (Montreal: McGill Queen's University Press, 2007); R. A. Houston, *Madness and Society in Eighteenth-Century Scotland* (Oxford: Clarendon Press, 2000); J. Moran, 'The architecture of madness: Informal and formal spaces of treatment and care in nineteenth-century New Jersey', in L. Topp, J. Moran and J. Andrews (eds), *Psychiatric Spaces: Architecture and the Built Environment, 1600–2000* (Routledge, 2007), pp. 153–72; J. Moran, 'Asylum in the community: Managing the insane in antebellum America', *History of Psychiatry*, 9:34 (1998), 217–40.
- 40 Suzuki, *Madness at Home*, p. 2.
- 41 *Ibid.*
- 42 *Ibid.*, pp. 191–2, fn. 2.
- 43 This subheading is borrowed from the stimulating analysis in R. Keller, 'Madness and colonization: psychiatry in the British and French empires, 1800–1962', *Journal of Social History*, 35:2 (2001), 295–326.
- 44 D. Kirkby and C. Coleborne, 'Introduction', in D. Kirby and C. Colborne (eds), *Law, History, Colonialism: The Reach of Empire* (Manchester: Manchester University Press, 2001), p. 3.

- 45 For one view of the extent to which a farmer's life in early America was bound up with legal affairs, see R. L. Bushman, 'Farmers in court: Orange County, North Carolina, 1750–1776', in C. Tomlins and B. Mann (eds), *The Many Legalities of Early America* (Chapel Hill: University of North Carolina Press, 2001), pp. 388–413.
- 46 This can be seen in a growing historiography that includes: W. Ernst, *Mad Tales from the Raj: The European Insane in British India, 1800–1858* (New York: Anthem Press, 1991); G. el-Khayat, *Une psychiatrie moderne pour le Maghrib* (Paris: Harmattan, 1994); J. McCulloch, *Colonial Psychiatry and 'the African Mind'* (New York: Cambridge University Press, 1995); J. Sadowsky, *Imperial Bedlam: Institutions of Madness in Colonial Southwest Nigeria* (Berkeley: University of California Press, 1999); J. H. Mills, *Madness, Cannabis, and Colonialism: The 'Native Only' Lunatic Asylums of British India, 1857–1900* (New York: St Martin's Press, 2000); S. Swartz, 'Madness and colonial spaces: British India, c. 1800–1947', in L. Topp, J. Moran and J. Andrews (eds), *Madness, Architecture and the Built Environment: Psychiatric Spaces in Historical Context* (Routledge, 2007), pp. 215–38; J. Parle, *States of Mind: Searching for Mental Health in Natal and Zululand, 1868–1918* (Scottsville: University of KwaZulu-Natal Press, 2007); W. Ernst and T. Mueller (eds), *Transnational Psychiatries: Social and Cultural Histories of Psychiatry in Comparative Perspective c. 1800–2000* (Newcastle: Cambridge Scholars, 2010); M. Sloan and M. Vaughan, *Psychiatry and Empire* (Basingstoke: Palgrave Macmillan, 2007); L. Smith, *Insanity, Race and Colonialism: Managing Mental Disorder in the Post-Emancipation British Caribbean, 1838–1914* (Hampshire: Palgrave Macmillan, 2014); C. Coleborne, *Insanity, Identity and Empire: Immigrants and Institutional Confinement in Australia and New Zealand, 1873–1910* (Manchester: Manchester University Press, 2015).
- 47 Sloan and Vaughan, *Psychiatry and Empire*, p. 1.
- 48 *Ibid.*, pp. 1–3.
- 49 *Ibid.*, pp. 3–4.
- 50 P. Wacker, *Land and People: A Cultural Geography of Preindustrial New Jersey: Origins and Settlement Patterns* (New Brunswick: Rutgers University Press, 1975), p. 119.
- 51 Histories of the Lenape/Delaware peoples who inhabited what became the Colonies and State of New Jersey can be found in: C. A. Weslager, *The Delaware Indians: A History* (New Brunswick: Rutgers University Press,

1972); and Wacker, *Land and People*. For an innovative gender analysis of the Lenape in colonial contexts see G. Fur, *A Nation of Women: Gender and Colonial Encounters Among the Delaware Indians* (Pennsylvania: University of Pennsylvania Press, 2009). By the mid to late nineteenth century a more developed psychiatric analysis would posit that Native Americans, like indigenous peoples elsewhere, were less likely to become mentally ill, due to their relatively underdeveloped societies. See, A. M. Oda, C. Banzato and P. Dalgarrondo, 'Some origins of cross-cultural psychiatry', *History of Psychiatry*, 16:2 (2005), 155–69.