SOURCES IN THE HISTORY OF PSYCHIATRY, FROM 1800 TO THE PRESENT

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Psychiatry and law

Psychiatry since 1800 has been intimately connected with the law. The building, filling, and later, emptying of asylums was governed by legislation, and those dissatisfied with the way in which psychiatry was practised have often targeted mental health law reform through campaigns and legal challenges of their own. But the relationship between law and psychiatry runs deeper still. Legal systems are not only concerned with psychiatry as a profession to be regulated: the judiciary has increasingly drawn upon psychiatric expertise since 1800 to help resolve quandaries of its own. 'Wherever there are legal relations between people', as lawyer and historian Peter Bartlett has put it, 'there is a legal issue as to how those relations are affected by the insanity of one of the parties'.[1] Whether that relation is an attempted murder, a marriage, or a business deal, legal questions about responsibility, culpability, autonomy, and insanity have generated responses from medical experts. For some scholars, legal demands and decisions have not simply engaged with psychiatry; they have 'constructed and reconstructed' it, shaping its every aspect.[2]

Despite these connections between law and psychiatry, legal sources themselves are relatively rarely used by historians. One goal of this chapter is to address some of the potential barriers to their fuller exploitation, building on Peter Bartlett's valuable introduction to legal sources for histories of madness in the nineteenth century, published in the *Social History of Medicine* journal in 2001.[3] Assuming that one major barrier is still a lack of familiarity amongst historians, who are rarely trained in law, this chapter begins with a discussion of three specific kinds of legal source that merit attention: case law, court records, and legislation. In describing and giving examples of these sources and the ways in which they have been used in recent decades, this chapter considers what kinds of information they can provide and what strategies might be useful for interpreting them. Some of these

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points are then illustrated with a case study from the archives of the Court of Protection of England and Wales. The chapter concludes with a brief reflection on some further questions that legal sources pose for historians of psychiatry.

What is a legal source?

Understanding different types of legal source requires some familiarity with legal systems, which can vary hugely from place to place as well as over time. The distinction between 'common law' and 'civil law' systems is particularly important, not least because one of the primary sources of law itself in common law systems, alongside statutes passed by government, is the judgements handed down in past cases. These judgements are known as 'case law'. The central role played by case law is why many common law systems refer to rules or principles set down in previous legal proceedings, rather than any rules to be found in legislation. One example is the test in England and Wales for determining whether an individual has capacity to make a valid will. This test was set down as part of the court's decision in the 1870 case of Banks v Goodfellow, in which the validity of the late John Banks's will was confirmed despite his history of delusions and confinement in an asylum.[4] In contrast, 'civil law' systems rely upon a systematic written code which sets down the legal principles and procedures that must be followed. The Napoleonic Code, introduced in France in 1804, is one such example. Each case within a civil law jurisdiction is then decided on its own merits in accordance with the code, paying no attention to other, similar cases that may have been heard before.

European colonisers tended to take their laws and legal systems with them, disrupting or displacing existing legal systems entirely. Indeed, it is possible that legal systems and methods, rather than asylums and psychiatry, played a primary role in responding to and shaping ideas of madness in colonised regions of the world.[5] Since 1800, the legal systems of many nations have changed dramatically as a result of colonialism. Civil law systems can be found today across most of continental Europe and South America, parts of Northern Africa, and much of East Asia. Common law systems based upon that of England and Wales are present in Australia, New Zealand, most of the United States, and much of Canada, with elements of English common law also found in countries including India, Pakistan, Nigeria, and Israel. This chapter will focus on common law systems, and particularly that of England and Wales. Some of what follows can be applied much more broadly, particularly to other common law jurisdictions, but inevitably different legal systems will bring their own challenges and opportunities in terms of documentation and interpretation.

Case law is unfamiliar territory for historians and very rarely mentioned in histories of psychiatry, despite being a cornerstone of common law legal systems and a potentially rich source. The source itself will generally take the form of a reported judgement. This is the published record of the decision in a specific case, usually including a statement of the relevant facts as well as the judicial conclusions reached. Figure 8.1 gives an example of the first page of a mid twentieth century

C. A.
1952
PIKE
v.
PIKE.
Denning L.J.

that would have been a different matter. In such a case, as we said in *Barnard* v. *Barnard*,[4] the best way of seeing whether the offer is genuine is to accept it and see whether he will take her in, but the wife did not suggest here that the offer was not genuine in that sense. There is no doubt that the husband wanted her back. She only said that she was justified in not going back because of his previous cruelty. That ought to be alleged and proved, and it was not even alleged. Her only proper course would have been to charge cruelty.

It is open to her, no doubt, to bring another petition now charging cruelty, but I certainly would not wish to encourage it. I agree that the appeal should be allowed.

SINGLETON L.J. I agree that the appeal should be allowed.

Appeal allowed.
Decree nisi set aside and petition dismissed.

Solicitors: *Sharpe, Pritchard & Co. for T. D. Windsor Williams, Neath, Glam.*

[4] (Unreported): November 18, 1952 (Final List of Appeals, No. 17).

IN THE ESTATE OF PARK, DECD. PARK *v.* PARK.

1953
May 15, 18, 19;
June 12.
Karminski J.

[1951 P. No. 1348.]

Husband and Wife — Marriage — Capacity to enter into marriage contract — Requisites — Previous probate action — Party sued as "widow" — Jury's finding that deceased mentally incapable of executing will made on marriage day—Estoppel—Jury's finding not binding on court considering mental capacity to marry.

A mere comprehension of the words of the promises exchanged at a ceremony of marriage is not sufficient to establish capacity of the parties to consent to the marriage at the time. The minds of the parties must also be capable of understanding the nature of the contract into which they are entering free from the influence of morbid delusions on the subject; and the essence of the contract is an engagement between a man and a woman to live together and to love each other to the exclusion of all others. Submission on the part of the woman may no longer be an essential part of the contract; but so far as the husband is concerned there is still the duty to maintain and to protect.

The defendant in this probate action sought to establish that the deceased was at the time of his marriage to the plaintiff incapable of appreciating the nature of the marriage contract, and the duties and responsibilities which it created, and that accordingly there was no consent to the marriage; and he asked the court to declare the marriage null and void and to pronounce in solemn form for a will executed before the ceremony. The plaintiff, the widow of

FIGURE 8.1 First page of the reported judgement from May–June 1953, in the case of Park v Park [1954] P. 89. Incorporated Council for Law Reporting of England and Wales, reproduced with kind permission.

reported judgement. Law reporting has its own complex history,[6] but probably the most important point to bear in mind is that judgements are only reported when they are of particular *legal* interest, or heard in the most senior courts. This is a minority of all cases heard by the courts. Given their important status as case law within common law systems, reported judgements are carefully preserved in law libraries, for which legal librarians will be able to provide navigational advice, and also in digital repositories of varying quality and accessibility.[7]

As case law is particularly unfamiliar to historians, it is worth giving an example in some detail. The mid twentieth century case of *Park v Park* is still occasionally cited today in disputes over mental capacity. The Park family dispute began shortly after the death of London businessman Mr Park in June 1949. Aged 78, having lost his wife of 50 years in 1948 and then suffered a stroke, Mr Park had remarried and made a will in favour of his new wife just two weeks before his death. His sons brought claims that neither the marriage nor the will could be valid, as their father had not been of sound mind. A fortune of over £120,000 was at stake, and Mrs Park, unsurprisingly, disputed these claims. The claim regarding the validity of the will was heard in the High Court in 1950 and was reported in *The Times*, which was (and is) considered a 'newspaper of record', meaning that, in a legal context, its accounts of court proceedings will be relied upon by jurists where no other report exists. *The Times* is often a valuable legal source, especially for the nineteenth century when law reporting was less systematic than it later became. The importance of newspapers as a form of legal source is discussed further below. The second claim in *Park v Park* dealt with the validity of the marriage. At first instance, in May/June 1953, the marriage was found to be valid. This decision was appealed, and in October 1953 the Court of Appeal considered the case and dismissed the appeal. Both of these judgements were published in 1954.[8]

In legal terms, the judgement from the Court of Appeal in October 1953 is perhaps the most interesting. It was the final word on the matter, and it considered the legal tests for capacity to marry in detail. For historians of psychiatry, though, the judgement from the proceedings in May and June may be more useful. It gives the circumstances surrounding the case in greater depth and describes the evidence from many witnesses. Notably, this judgement gives much more time and space to the evidence of lay witnesses rather than doctors. For this judgement, the most significant contribution from Dr Urwick, Mr Park's regular medical attendant, was that his patient's mental condition would vary a great deal from day to day, and even hour to hour. Dr Urwick was not a specialist: Mr Park did see another doctor following his stroke, but only on a few occasions and the contribution of this medical witness is summarised quickly and then not mentioned again. In contrast, the evidence of Lady Greer, a close friend of Mr Park's for many decades, and Mr Starkey, the long-established caretaker of the block of flats where Mr Park lived, was explored in much more detail and described as particularly valuable. Its significance was rooted in these witnesses' long familiarity with Mr Park and their regular everyday encounters with him. The account of Mr Starkey's evidence concerning his interactions with the late Mr Park, 'the deceased', is highly evocative not only of the

trial and the evidence itself but also of the way in which judgements are typically written, and it is worth quoting a section of this in full:

> Starkey was not, in my view, a man with great gifts of verbal expression, but he described by gesture rather than words the demeanour of the deceased and the conversations which took place after his stroke. Starkey said the deceased looked right through him and up and down and then stood still and vacant. Starkey demonstrated in the box by a piece of natural but convincing acting the vacant look and the rigid position of the body which he observed in the deceased. Starkey added, in homely but striking language, that if his own father had acted like the deceased he would have got someone to see about his head. In spite of his limitations, I thought Starkey was a shrewd observer of the deceased's condition.[9]

As this passage indicates, reported judgements do not pretend to reproduce evidence verbatim or to give a complete and impartial account of legal proceedings from start to finish. They are carefully constructed by their writer – likely to have been an enterprising lawyer in the nineteenth century, and thereafter, the judge – to persuade the reader of the final verdict. This imagined reader was a future jurist, not the witnesses or even the feuding parties themselves – although judgements or sections of judgements may be written with different audiences in mind, including the media and, recently, those directly affected by the case.[10]

This exercise in persuasion can be quite detailed, discussing everyday life and medical care, who was called to give evidence, whose evidence was given the greatest weight, and the kinds of behaviours or events that were influential in determining mental state. There are opinions and insights from a range of commentators, including but not limited to expert medical witnesses, brought together to illuminate and support the judge's eventual decision. In Mr Park's case, the judge concluded that Mr Park was capable of entering into a marriage notwithstanding his evident mental infirmity. What was important was that consent to a marriage did not require a high 'intellectual standard', and Mr Park had repeatedly (and apparently convincingly) talked to many witnesses about his profound loneliness after his wife's death, and his wish to remarry. The judgement is of course not a full account of Mr Park's life and state of mind, only that aspect which troubled his sons enough to go to court. Nevertheless, as Claudia Verhoeven has pointed out with reference to court records in general, 'the key concepts used to make sense of the unprecedented will reveal that culture's presuppositions about what constitutes ordinary and/or acceptable behavior'.[11] Put very simply, Mr Park's wish for companionship made sense.

Since the vast majority of cases are not reported, insight into more everyday legal events will usually require the records generated by courts themselves. But court records present a number of difficulties. As James Moran has suggested, court archives may have been more vulnerable to destruction than asylum archives, and even where records survive, those of interest to historians of psychiatry are usually

embedded within much larger archives of legal proceedings which can make them extremely difficult to trace.[12] Discussion of mental illness might appear almost anywhere: marriage and inheritance disputes, as we have seen; criminal proceedings of any type; divorce proceedings; contested insurance claims; disagreements over contracts, deeds, or trusts, and more. In addition, for historians of the twentieth century there are often access restrictions. In Scotland, for example, the records of civil cases in the Sheriff courts are only available to researchers after 100 years.[13] Lastly, even where court records can be identified within national or local archives and access is granted, they may not contain a great deal of interest. There is some variation in terms of content, which is often shaped by whether a particular court is 'adversarial' or 'inquisitorial'. 'Adversarial' courts are closely associated with common law systems, and here, two opposing parties will gather their own evidence, identify and question their own witnesses, and generally fight their own corner, with the court acting as an impartial referee. Evidence was (and is) often given orally, and court archives might contain little more than a note of the name, date, and outcome of a case. In contrast, within inquisitorial systems, it is the court itself that investigates and gathers evidence, identifies witnesses, and requests information – including expert evidence – to inform its deliberations. This often produces a much fuller paper trail.[14]

Digitisation projects offering more accessible and searchable archives may provide some solutions to the problems posed by court records, as does a little creative thinking. For criminal proceedings, the archives of state bodies engaged in bringing criminal prosecutions, such as the police or the Director of Public Prosecutions (DPP) in England and Wales, sometimes include copies or originals of the evidence gathered, including the reports of psychiatric experts and legal commentary on these and other materials.[15] Institutional and personal archives may also contain records of expert psychiatric evidence, and where these can be identified they will likely offer a rich resource.[16] For particularly high-profile cases, full transcripts were sometimes published for mass consumption, albeit with editorial interventions that may not be immediately obvious.[17] The Proceedings of the Old Bailey were regularly published and contain quite detailed accounts of criminal cases heard there from the seventeenth to early twentieth centuries.[18] By the nineteenth century, though, newspaper coverage of the courts at national and local level was increasingly extensive, and plenty of excellent work on forensic psychiatry relies upon newspaper reporting of court cases, rather than court records.[19] The Times generally covers high profile or legally interesting cases, while local papers will provide insight into more prosaic legal proceedings in their area, albeit often with a focus on criminal cases.

There is one additional note of caution to sound, regarding both case law and court records. In legal proceedings of any type, the stakes are high and there are usually sharply competing views, carefully assembled in line with specific rules (of evidence, procedure, and law itself). One result of this, as Carolyn Steedman puts it, is that the 'narratives they purport to be are often not true, in the everyday and historical sense of "true"'.[20] These sources may contain knowing lies; there may

also be omissions, distortions, and adjustments of the facts to meet the rules, to achieve specific goals, and even simply to accommodate the template documents of legal institutions. This does not mean that these sources are useless, only that they require the same critical thinking and attention to purpose and context as any other. One possible reading strategy for court records, taking this into account, is offered in the case study at the end of this chapter.

Finally, legislation itself is an important legal source, and not only legislation that mentions 'lunacy' or 'mental health'. Poor laws and those concerning health systems in general, for example, may be extremely relevant to historians of psychiatry.[21] As well as the words of the statutes themselves, historians might look at the circumstances that prompted them, the political debates that surrounded their passage into law, and the policies, rules, and codes of conduct that flowed from them. For the twentieth century, there are also international laws to consider as well as 'soft law' instruments, meaning declarations and commitments to which nations become signatories: the United Nations Declaration on the Rights of Mentally Retarded Persons 1971 is one such example. Like any source, laws and legal instruments have their limitations. A new piece of legislation might be unpopular, unclear, or in other ways unusable, meaning that what looks like a dramatic change has little or no practical impact. In the Republic of Ireland, for example, the Health (Mental Services) Act of 1981 set out to reform the processes and safeguards surrounding involuntary admission to psychiatric hospitals, but was never implemented.[22] Equally (and not unusually), new laws might reflect changes that have already taken place, whether in terms of public mood or common law, policy, and practice. The English Infanticide Acts of the early twentieth century, for example, appeared to create a new kind of offence and offender for which mental abnormality was a necessary precondition, but arguably did little more than formalise ideas and practices that had become firmly established decades earlier.[23] Sometimes, new laws are not new at all – perhaps especially in common law jurisdictions, where a great many legal principles exist separately from specific pieces of legislation, and a new or amended Act might state nothing more than the legal status quo.[24] For most historical enquiries, careful attention to laws in context will be invaluable.

Using legal sources

How have these kinds of sources been used by those interested in the history of psychiatry? Since the 1960s, legal sources have been used to explore three overlapping topics: the relationship between psychiatry and law, how mental illness has been perceived and understood, and policy responses to mental illness. As approaches to the sources have changed, so, too, have the conclusions reached. The relationship between psychiatry and law was initially characterised as hostile – or at the very least, one of irreconcilable difference. Nigel Walker's *Crime and Insanity in England* (1968) drew on a variety of legal proceedings in which insanity was argued, and paid close attention to evidence from psychiatrists and its reception.

This and Roger Smith's comprehensive *Trial by Medicine* (1981) identified a great deal of tension between expert medical witnesses and jurists within court proceedings, attributed to the fundamentally conflicting views of human nature upon which each profession drew. Law depended upon the principle that individuals were in possession of rational free will; medicine increasingly supposed that other forces were at work in determining human behaviour. As a result of this, these historians concluded, legal practitioners 'considered medical theory pretentious and showed little sympathy with medical men who tried to explain the grounds on which they based their opinions'.[25] Scholarship concerning forensic psychiatry in other jurisdictions also took up the theme of adversarial relations between the disciplines.[26]

Since the 1990s, historians of psychiatry have revisited Victorian court proceedings with greater sensitivity to the context in which they were produced, and have perceived a much less combative relationship between law and psychiatry. This was, after all, an adversarial legal system that required, by definition, the production and public performance of disagreement. Using Old Bailey court records and thinking about the kinds of cases in which psychiatric evidence was introduced and what effect it seemed to have upon sentencing, Joel Eigen argued that the two disciplines more often collaborated than competed. Psychiatric ideas were not resented, but rather, were eagerly adopted by defence lawyers and by (some) courts keen to find a reason to reduce the severity of punishments, especially for minor crimes.[27] Historians have also begun to look beyond the nineteenth-century insanity defence and towards the role of forensic psychiatry in the twentieth century, particularly in relation to sexual offenders. Using not only expert evidence in criminal proceedings and new legislation, but also the wider criminological literature and debate, this work tends to see a good deal of ambivalence about the role of psychiatry within criminal law, from psychiatrists and the judiciary alike. It also emphasises strategic uses of psychiatric knowledge, with ambiguous concepts such as the 'sexual psychopath' deployed to deliver both indeterminate detention and non-custodial punishments alike.[28]

This relates to the second topic for which legal sources have been used: understanding how mental illness has been perceived. Early case studies tended to focus on the evidence of experts, but later work has paid attention to the wider range of opinion that might be voiced within legal sources. Eigen's scrutiny of court records suggested that lay ideas of madness remained influential throughout the first half of the nineteenth century, and indeed, that these ideas strongly influenced psychiatry. Delving more deeply into descriptions and determinations of mental illness within legal sources, Peter Bartlett found that delusions became central to what it meant to be insane in law – not least because it was a relatively flexible idea that could bend to meet both medical and legal frameworks. James Moran's use of 'lunacy trials' in New Jersey also highlights frequent reference to delusions amongst witnesses, along with accounts of violent behaviour. But, as he observes, this could reflect a pragmatic use of lunacy law by families and communities to deal with violence amongst their members, rather than a belief that

violence necessarily indicated lunacy. In this light, how might lay and legal models of madness influence one another, over time?[29]

Legal scholars adopting socio-historical approaches have offered a different perspective again. From close readings and careful contextualisation of reported judgements and court proceedings, they have analysed and explained changing legal models of mental infirmity, which were to some extent influenced by psychiatry but also deeply responsive to wider social change. Work on civil competence not only highlights the varied and conflicting views of self and sanity that litigants and judges presented, but also the political salience of these kinds of disputes, as Susanna Blumenthal has shown. Along with Arlie Loughnan's study of mental capacity in the criminal context, this close attention to a broad range of legal events provides an illuminating perspective on the uses and limitations of medical ideas in legal contexts, identifying both continuity and change within legal models of the rational or responsible individual.[30]

The third topic, policy responses to psychiatry and mental illness, makes intensive use of legislation and the debates that surround it, rather than case law or court records. New laws are often read as signs of a desire (if not always fully realised) to change policy and practice. Early histories, such as those by Kathleen Jones, charted new mental health laws and their implementation in order to describe the evolution of mental health policy over two centuries. This was not quite a tale of progress, since it picked up on the theme of medico-legal incompatibility and described each law in terms of a pendulum swinging between 'law' and 'medicine'; in Jones's view progress only occurred when the pendulum swung towards medicine.[31] Readings of legislation as another medico-legal battlefield have lingered on, but increasingly, historians using mental health legislation have considered these laws as indicators of changing ideas of citizenship and the role of the state.[32] Here, legislation is just one aspect of a much broader picture of political, professional, and popular concerns.

These three recurring topics – the relationship between psychiatry and law, perceptions of mental illness, and policy responses – can all be identified within the archives of the Court of Protection of England and Wales, to which we now turn. Using a file from this archive as a case study, the next section suggests a close reading that responds to the context and factual flexibility of legal records, and draws out these themes as they shaped the mid-twentieth century case of Miss Jean Carr.

A case study: Jean Carr and the Court of Protection

One of the least well-trodden paths in the use of legal sources is determinations of civil competency, 'marginal in the history of modern law and madness to the point of being almost ignored'.[33] Can someone with dementia make a will? Can someone with anorexia refuse treatment? Should someone with a severe mental illness (or learning disability) be prevented from selling their home, or giving their money to friends instead of paying their bills? Some of the difficulties in locating

legal sources where these questions are addressed have been discussed above, but it remains a potentially rich field with scope for illuminating the management of mental illness, medico-legal relationships, and wider cultural beliefs. In England and Wales, the Court of Protection (and its precursor institutions) has overseen determinations of civil competency - usually known as mental capacity, in this context - in relation to financial decision-making for centuries. Its archives are patchy, but for the mid-twentieth century a good sample of case files has been retained. It is from this archive that my case study is drawn.[34]

Miss Jean Carr (1913–1992) was an artist and art lover from the south of England. She was independently wealthy; her father's family had made their fortune in biscuit manufacturing, and as both her father and an uncle had died during Jean's childhood and left her legacies in their wills, she inherited a substantial fortune on her twenty-first birthday. As this birthday approached, Jean's mother applied to the Court of Protection (or Management and Administration Department, as it was then known) to have Jean declared incapable of managing her property and affairs by reason of infirmity caused by disease. Mrs Carr asked to be appointed as Jean's 'receiver', meaning that she would have day-to-day control over Jean's money.

The law governing this process is indicated by the heading of the form that Mrs Carr had to complete: '53 Vic C 5 and Amending Acts'. This refers to the fifth Act passed during the session beginning in the 53rd year of Queen Victoria's reign: the Lunacy Act of 1890. This Act is mainly known for its impact upon admission to and governance of asylums, but the legal proceedings within this archive indicate the potential importance of the Act in other circumstances too. Mrs Carr's application had nothing at all to do with asylum care. Jean's file states that she came under the auspices of the Court in accordance with section 116 (d) of the 1890 Act, meaning that she was not a lunatic so found by inquisition, nor was she held in an institution of any kind: she was simply incapable of managing her property. Reference in section 116 of the Act to lunatics so found by inquisition points to the antecedents of this procedure. In the nineteenth century and before, Mrs Carr would have had to petition for a lunacy inquisition, held in public before judge and jury, for her daughter to be deemed lunatic and incapable of managing her own property. This had been changed by the 1890 Act, opening the door to a much more private process in which any kind of infirmity affecting someone's ability to manage their daily affairs could be grounds for intervention. It was also faster and cheaper, making this process accessible to many more people whose property might need protecting or controlling. The vast majority of applications were dealt with by the Master in Lunacy or one of his Assistants on the basis of written evidence alone. Mental capacity in this context was no longer something to be assessed by a jury of peers, but by a legal expert in receipt of medical evidence.

Mrs Carr's application consisted of a form detailing Jean's family and financial position, 'the circumstances giving rise to these proceedings', and proposals as to how Jean's money should be spent during her incapacity. Along with an affidavit

from Jean's doctor, this was sent by the Carr family solicitors to the Master in Lunacy at the Royal Courts of Justice for consideration. The Master then drafted an Order affirming that Jean was incapable, appointing her mother as her receiver, and giving directions regarding the amount to be spent on her maintenance. Jean was formally notified, and there is no record that she raised any objections. The hearing itself was a meeting between the Carr family solicitor and the Master in the Master's office, so uneventful and brief that no record of it other than the summons remains.

What do these records tell us about the circumstances surrounding Jean's incapacity? 'The Patient has since leaving school been delicate,' Mrs Carr's application reads, 'and has lived at home and not been able or willing to take part in social affairs.'[35] She had been at The Cassel Home in Sussex, then at the family home in the care of a live-in nurse, then sent to a Dr Crouch at St Michael's, Ascot, at a cost of £39 a fortnight. Hopefully, she would soon be able to return home again with a nurse. Dr Crouch supplied the medical evidence. His patient was

> suffering from inability to concentrate on any subject for more than a few minutes at a time. e.g. she will start having a meal and forget to go on with it requiring constant urging. When spoken to on any subject she will wander on to some other in a minute or two. If about to brush her teeth will forget what she is going to do. If writing a letter will start it but is unable to continue. Will put her shoes in a cupboard and forget where they are.

Her symptoms had first manifested nearly two years ago when Jean was aged 19, and the prospects of recovery were 'Doubtful', despite some recent improvement. The cause? 'Functional disorder of nervous system'.[36]

Here is a snapshot of medical and familial ideas and practices regarding mental infirmity. Mrs Carr outlines the steps taken to care for Jean since she became ill: neither mental hospital nor treatment from a specialist on an outpatient basis, but care at home or in home-like environments (which did not come cheap). Mrs Carr is less forthcoming about what, exactly, was wrong. The very fact of her initiating these proceedings indicates that she was significantly concerned about something; this process may have been more discreet and cheaper than its nineteenth-century iterations, but it was nonetheless a substantial legal intervention into private affairs which would not be undertaken lightly. Mrs Carr's statement was probably drafted or finalised by solicitors, who may have advised that she focus on the practical side of Jean's finances and living situation, leaving the medical aspect to the medical expert. Mrs Carr could avoid saying too much about her daughter's health without jeopardising the application, but her reference to delicacy and a lack of experience or interest in social life is suggestive. Avoiding any direct reference to illness (and certainly avoiding any implication of 'lunacy' or insanity), Mrs Carr presents a picture of a timid and isolated young woman who, by implication, would not be able to cope with the management of her

inheritance. Perhaps most suggestive of all is the phrase 'not able *or willing*' to engage in social life (my emphasis). There is uncertainty here: was Jean ill and therefore unable, or was she eccentric, badly behaved, or unsympathetic to social and parental pressures, and therefore unwilling? This phrase could be a glimmer of maternal impatience or legal incredulity, suggesting that Jean's diagnosis did not meet with universal acceptance.

Dr Crouch provides this diagnosis and is much more specific, as was required by the questions on the form he had to complete. He perceived Jean's primary symptom rather differently from her mother: in his view, the main problem was an inability to concentrate. His examples, taken from everyday life, are well chosen to portray her limitations in even the simplest practical matters. His diagnosis and prognosis are themselves interesting, indicating the terminology used to denote milder forms of mental illness, and a degree of pessimism regarding cure. This pessimism may not have been entirely straightforward, though. The court was reluctant to intervene and to appoint a receiver where recovery seemed imminent, and either the Carr family solicitors or Dr Crouch himself, as a specialist possibly involved in such applications before, may have been aware of this. Dr Crouch may have adopted a more negative view on this paperwork than he would express in other circumstances, to prospective or current patients or their families, for example. Importantly, his diagnosis and prognosis were accepted by the court without any qualms, suggesting that they were not unusual within these kinds of applications.

The archive contains various medical statements that describe Jean's treatment and recovery over the following years, as well as reports from the official Medical Visitors sent on behalf of the court to review her circumstances and state of mind. The latter reports were usually stored separately in the files of the Visitors and by law should have been destroyed once the case came to an end in 1940. The happy historical accident of their survival is itself revealing: Jean's case was atypical and became difficult from a medico-legal point of view, prompting more regular reference to the medical opinions contained in these reports, and the retention of the reports within this file. Medical and legal opinions differed, but notes of discussions between these experts suggest that Jean's character, wishes, and weaknesses were carefully weighed up. All agreed that Jean's condition was improving, but she remained nervous and reliant on others. There might be 'disastrous results', one such note records, 'if she ever got into the hands of dishonest persons'.[37] Later notes discuss whether there was a legal route to protect her property from devious suitors if she should regain full control over her money. As a wealthy young individual, and specifically a wealthy young woman, Jean's vulnerability to fraudsters and unscrupulous would-be husbands was at the forefront of the minds of the men who contemplated her future.

Although Jean's situation was not exactly run of the mill, her file offers several insights into matters of mental health policy in the mid-twentieth century, the relationship between psychiatry and law, and ideas of madness. It also documents Jean's life over a six-year period, discussing her living circumstances, medical

treatment, and nursing care, as well as practical questions to do with her finances. Fragments of Jean's own views also appear, initially ventriloquised through the doctors that assessed her, and then in her own words as she set about overturning the legal finding of incapacity. The few letters from her in the file are extremely business-like, perhaps composed at least in part as informal evidence of her full recovery. Like her mother, she leaves almost all comment on her mental state to the medical experts, but her unhappiness and frustration with her family in particular shines through. Some legal sources can also offer such glimpses of the lives and views of those most directly affected by legal methods of responding to madness.

Conclusion: law and psychiatry

Legal systems have long been used to respond to suspected mental infirmity and have transformed – some might even say created – the discipline of psychiatry. To conclude, I would like to offer some brief comment on two further questions about the history of psychiatry, that legal sources suggest. Firstly, legal sources may have something to say about the movement of psychiatric ideas, not only between doctors, jurists, and the full gamut of people initiating or caught up in legal events, but also across place. Since colonists took their legal structures with them, legal proceedings concerning people and events in one part of the world might be passed to far-distant courts for final resolution. After all, the Privy Council of the United Kingdom was the Supreme Court of Appeal for the entire British Empire, and continued as such for commonwealth countries until the late twentieth century. More recently, international treaties have drawn to some extent on global expertise but have been received and implemented unevenly. How, then, has mental health law been applied and adapted in different settings? What role has the law played in the global transmission of psychiatric ideas, from colony to metropole or from regional to transnational contexts, and vice versa?

Then, there are the questions raised by paying close attention to individual cases within legal sources. This attention need not be limited to high-profile trials and well-known defendants; microhistorians have already modelled the use of legal sources for telling the stories of 'humble' or 'ordinary' lives. What was everyday life like, for someone like Mr Park or Miss Carr? Where did they call home, and who provided care for them? What role did psychiatry play in these routine decisions, and how were its interventions received? The factual flexibility of legal sources requires close and cautious reading, but this feature also lends itself to imaginative explorations of what may have been, beyond the courtroom and between the lines. Legal sources are full of personal stories, and can be used to address individual experiences and agency as well as broader medico-legal developments and related historical processes. For historians of psychiatry, legal sources are not only evidence of policies, ideas, and interdisciplinary entanglements, but also evidence of their impact on individual lives.

Notes

1 Peter Bartlett, 'Legal Madness in the Nineteenth Century', *Social History of Medicine*, 14, 1 (2001), pp. 107–31: p. 107.
2 Roger Smith, 'Legal Frameworks for Psychiatry', in German E. Berrios and Hugh Freeman (eds), *150 Years of British Psychiatry, 1841–1991* (London: Gaskell, 1991), pp. 137-51: p. 138.
3 Bartlett, 'Legal Madness'.
4 *Banks v Goodfellow* [1870] 5 Q.B. 549.
5 James Moran, *Madness on Trial: A Transatlantic History of English Civil Law and Lunacy* (Manchester: Manchester University Press, 2019).
6 Chantal Stebbings (ed.), *Law Reporting in Britain* (London: Bloomsbury, 1995).
7 Many judgements are available from the British and Irish Legal Information Institute (known as BAILII), a free online legal database of mostly British case law, legislation, Law Commission reports, and other legal material: www.bailii.org. In addition to the free resources of BAILII, subscription options that provide more comprehensive access to case law include the Westlaw and Justis databases. Legal library membership will generally provide free access to one or more of these. For guidance on how to locate English case law, see Bartlett, 'Legal Madness', pp. 113–4.
8 These reports are 'In re Park; Culross v. Park,' *The Times*, 1 Dec. 1950, p. 9, and 2 Dec. 1950, p. 5; *In the estate of Park, dec'd: Park v Park,* [1954] P.89 and [1954] P.112; *Park v Park* [1953] 3 W.L.R. 1012. *The Times* has a digital archive with Gale Primary Sources: https://www.gale.com/intl/primary-sources. This can be accessed through the British Library in London and many other academic libraries. The judgements published in 1953 and 1954 can be obtained from the Westlaw UK legal database: https://legalsolutions.thomsonreuters.co.uk/en/products-services/westlaw-uk.html (subscription required).
9 *In the estate of Park, dec'd: Park v Park,* [1954] P.89, pp. 105–6.
10 John Harrington, Lucy Series, and Alexander Ruck-Keene, 'Law and Rhetoric: Critical Possibilities', *Journal of Law and Society*, 46, 2 (2019), pp. 302–27: p. 308, pp. 322-324.
11 Claudia Verhoeven, 'Court Files', in Miriam Dobson and Benjamin Ziemann (eds), *Reading Primary Sources: The Interpretation of Texts from Nineteenth and Twentieth Century History* (New York: Routledge, 2009), pp. 90–105: p. 97.
12 James Moran, 'A Tale of Two Bureaucracies: Asylum and Lunacy Law Paperwork', *Rethinking History*, 22, 3 (2018), pp. 419–36.
13 These records are held by the National Records of Scotland in Edinburgh.
14 For more on the impact of adversarial and inquisitorial systems on the development of forensic medicine itself: Catherine Crawford and Michael Clark (eds), *Legal Medicine in History* (Cambridge: Cambridge University Press, 1994); Joel Peter Eigen, *Witnessing Insanity: Madness and Mad-Doctors in the English Court* (New Haven and London: Yale University Press, 1995), pp. 112–3; Katherine D. Watson, *Forensic Medicine in Western Society: A History* (London and New York: Routledge, 2011) esp. Ch. 1.
15 DPP and Metropolitan Police archives are held at The National Archives in London (hereafter TNA); records from other police forces are fragmented and mostly held in county or city archives.
16 For example, the university archive used in Günther Häßler and Frank Häßler, 'Infanticide in Mecklenburg and Western Pomerania: Documents from Four Centuries (1570–1842)', *History of Psychiatry*, 22, 1 (2011), pp. 75–92.
17 For example, MacDonald Critchley, *The trial of Neville George Clevely Heath* (London: William Hodge & Co, 1951).
18 Available at www.oldbaileyonline.org.
19 For example, Hilary Marland, *Dangerous Motherhood: Insanity and Childbirth in Victorian Britain* (Basingstoke: Palgrave Macmillan, 2004); Akihito Suzuki, *Madness at Home: The Psychiatrist, the Patient and the Family in England, 1820–1860* (Berkeley, CA: University of California Press, 2006). The British Library provides comprehensive access to digital, print, and microfiche newspaper archives.

20 Carolyn Steedman, *History and the Law: A Love Story* (Cambridge: Cambridge University Press, 2020), p. 232. For an insightful exploration of this question, see Shelley McSheffrey, 'Detective Fiction in the Archives: Court Records and the Uses of Law in Late Medieval England', *History Workshop Journal*, 65, 1 (2008), pp. 65–78.
21 Peter Bartlett, *The Poor Law of Lunacy: The Administration of Pauper Lunatics in Mid-Nineteenth-Century England* (London: Leicester University Press, 1999).
22 Pauline Prior, 'Mental Health Law on the Island of Ireland, 1800–2010', in Pauline Prior (ed.), *Asylums, Mental Health Care, and the Irish: Historical Studies, 1800–2010* (Dublin: Irish Academic Press, 2012), pp. 316-334.
23 Arlie Loughnan, 'The "Strange" Case of the Infanticide Doctrine', *Oxford Journal of Legal Studies*, 32, 4 (2012), pp. 685–711.
24 One recent example is the Domestic Abuse Bill of 2020 and its widely celebrated measures to prohibit the so-called 'rough sex defence' in homicide cases. It is already the case in common law that consent is not a defence where serious harm has been inflicted, except in the context of certain recognised activities such as sports or tattooing. Hannah Bows and Jonathan Herring, 'Getting Away With Murder? A Review of the "Rough Sex Defence"', *The Journal of Criminal Law*, 84, 6 (2020), pp. 525–38.
25 Nigel Walker, *Crime and Insanity in England: The Historical Perspective* (Edinburgh: Edinburgh University Press, 1968), 1; Roger Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* (Edinburgh: Edinburgh University Press, 1981), p. 109.
26 For example, James C. Mohr, *Doctors and the Law: Medical Jurisprudence in Nineteenth-Century America* (New York: Oxford University Press, 1993).
27 Eigen, *Witnessing Insanity*.
28 Simon A. Cole, 'From the Sexual Psychopath Statute to "Megan's Law": Psychiatric Knowledge in the Diagnosis, Treatment, and Adjudication of Sex Criminals in New Jersey, 1949–1999', *Journal of the History of Medicine and Allied Sciences*, 55, 3 (2000), pp. 292–314; Roger Davidson, 'Law, Medicine and the Treatment of Homosexual Offenders in Scotland, 1950–1980', in Imogen Goold and Catherine Kelly (eds), *Lawyers' Medicine: The Legislature, the Courts and Medical Practice, 1760–2000* (Oxford: Hart, 2009), pp. 125–42.
29 Moran, *Madness on Trial*.
30 Susanna L. Blumenthal, *Law and the Modern Mind: Consciousness and Responsibility in American Legal Culture* (Cambridge, MA: Harvard University Press, 2016); Arlie Loughnan, *Manifest Madness: Mental Incapacity in Criminal Law* (Oxford: Oxford University Press, 2012).
31 Kathleen Jones, *Lunacy, Law, and Conscience, 1744–1845* (Routledge & Kegan Paul, 1955); Kathleen Jones, *Mental Health and Social Policy, 1845–1959* (London: Routledge & Kegan Paul, 1960); Kathleen Jones, 'Law and Mental Health: Sticks or Carrots?', in Berrios and Freeman, *150 Years of British Psychiatry*, pp. 89–102.
32 Mathew Thomson, *The Problem of Mental Deficiency: Eugenics, Democracy and Social Policy in Britain, c.1870–1959* (Oxford: Clarendon, 1998); Clive Unsworth, *The Politics of Mental Health Legislation* (Oxford: Clarendon, 1987).
33 Bartlett, 'Legal Madness in the Nineteenth Century', p. 117. This article also gives a useful summary of different types of competency proceedings.
34 Records relating to Miss Jean Carr are in TNA, London, catalogue reference J92/77, 'CARR, Jean Alison, 1934–1941'. For more on the Court of Protection in general: Janet Weston, 'Managing Mental Incapacity in the 20th Century: A History of the Court of Protection of England & Wales', *International Journal of Law and Psychiatry*, 68 (2020), https://doi.org/10.1016/j.ijlp.2019.101524, accessed 16 Mar. 2021.
35 Initial application from Anita Carr, in TNA J92/77.
36 Medical affidavit dated 28 Jun. 1934, in TNA J92/77.
37 Anonymous file minute from Nov. 1936, in TNA J92/77.

Select bibliography

Bartlett, P., 'Legal Madness in the Nineteenth Century', *Social History of Medicine* 14, 2001, pp. 107–131.

Blumenthal, S.L., *Law and the Modern Mind: Consciousness and Responsibility in American Legal Culture*, Cambridge, MA: Harvard University Press, 2016.

Crawford, C. and Clark, M. (eds), *Legal Medicine in History*, Cambridge: Cambridge University Press, 1994.

Eigen, J.P., *Witnessing Insanity: Madness and Mad-Doctors in the English Court*, New Haven, CT: Yale University Press, 1995.

Loughnan, A., *Manifest Madness: Mental Incapacity in Criminal Law*, Oxford: Oxford University Press, 2012.

Moran, J., *Madness on Trial: A Transatlantic History of English Civil Law and Lunacy*, Manchester: Manchester University Press, 2019.

Steedman, C., *History and the Law: A Love Story*, Cambridge: Cambridge University Press, 2020.

Thomson, M., *The Problem of Mental Deficiency: Eugenics, Democracy and Social Policy in Britain, c.1870–1959*, Oxford: Clarendon, 1998.

Watson, K.D., *Forensic Medicine in Western Society: A History*, London: Routledge, 2011.