

Liberty and Property in Victorian Lunacy Panics

Ellen Yarr

Questions of social reform were rife in mid-nineteenth century Britain. During this time, various legislative acts passed through parliament that created legal interventionist policies for social issues. One of these issues was the treatment of the mentally ill, who the Victorians would have referred to as ‘lunatics.’ The topic of lunacy law became a particularly popular subject of concern among the middle-class, who feared that perfectly sane Britons were being locked up in lunatic asylums with no hope of returning to society. Many scholars deem these outbursts of public concern ‘lunacy panics.’¹ These bursts of public anxiety eventually led to the establishment of the Commissioners of Lunacy, created through the Lunacy Act of 1845.² These Commissioners oversaw lunatic asylums, and were meant to respond to public concerns surrounding both the admittance policies and treatment of patients.³ What is strikingly absent, however, from both the Commissioners' reports and public anxiety, is concern regarding the admission and treatment of pauper, or working-class, lunatics. The question this paper aims to answer, then, is why lunacy law reformers paid little attention to the unjust confinement of pauper lunatics and opted instead to focus on the false confinement of middle to upper-class Britons. In answering this question, special attention will be paid to exclusionary notions of liberty of the nineteenth century.

Ultimately, this essay argues that the intertwining of liberty and property in nineteenth century British thought meant that discussions of liberty focused primarily on the propertied classes. The Lunacy Act of 1845, in addition to establishing the Commissioners of Lunacy as private asylum investigators, made it mandatory for all counties to create public asylums for pauper lunatics.⁴ This was a response to the lack of spaces for working-class lunatics, who often found themselves on the street, or in overcrowded hospitals.⁵ These new institutions for

¹ Peter McCandless, “Liberty and Lunacy: The Victorians and Wrongful Confinement,” *Journal of Social History* 11, no.3 (1978), 84, accessed November 26, 2021, <https://www.jstor.org/stable/3786820>.

² Peter McCandless, “Dangerous to Themselves and Others: The Victorian Debate over the Prevention of Wrongful Confinement,” *Journal of British Studies* 23, no.1 (1983), 85, accessed November 26, 2021, <https://www.jstor.org/stable/175621>.

³ McCandless, “Dangerous to Themselves and Others: The Victorian Debate over the Prevention of Wrongful Confinement,” 85.

⁴ Peter Bartlett, *The Poor Law of Lunacy* (London; Washington: Leicester University Press, 1999), 90.

⁵ Andrew T. Scull, *Museums of Madness* (New York: St. Martin's Press, 1979), 18-19.

working-class lunatics could, to the optimist, be viewed as a more effective and humanitarian approach. However, as many historians have observed, it was more likely a technique used to place the ‘inconvenient’ poor out of the public eye.⁶ Even nineteenth-century Britons commented on “how much laxer ... the standards (were) for judging a poor person to be insane, and...how much readier both local poor law authorities and lower class families were to commit decrepit and troublesome people to the asylum, individuals who, had they come from the middle and upper classes, would never have been diagnosed as insane.”⁷ This facilitated admittance of the working class into lunatic asylums is reflected in the fact that they represented the majority of the lunatic population in England at the time.⁸ Despite this reality, pauper lunatics rarely, if ever, appeared in discourses of wrongful confinement.

Both advocates for lunacy reform and the public at large concerned themselves mostly with wrongful confinement in private asylums, where middle to upper-class Britons were sent, and whose admittance required payment. Of course, there are simple explanations as to why middle and upper-class Britons became the focus of wrongful confinement concerns. As Peter McCandless points out, a wrongfully confined middle-class Briton would have more resources, both socially and monetarily, to bring legal attention to his wrongful confinement. A member of the working-class would not have had these same resources, and therefore his case for wrongful confinement would not have reached the public’s attention.⁹ Although these are plausible answers, they seem insufficient to answer the question as to why societies that aimed to speak for wrongfully confined ‘lunatics,’ as well as various other inspections into the state of lunacy houses in general, consistently failed to pay heed to pauper lunatics. I believe a further, slightly more complex, answer to these questions is needed. This is where an exploration of a specifically British and landed notion of ‘liberty’ will be necessary.

A particularly British conception of liberty can be seen reflected in the exclusion of pauper lunatics from nineteenth-century lunacy panics. Historian Abraham Kriegel defines this liberty as having three interconnected strands: “the inviolability of property, aristocratic honour, and the preservation of a hierarchically ordered society.”¹⁰ Property was particularly

⁶ Scull, 20.

⁷ Elaine Showalter, “Victorian Women and Insanity” *Victorian Studies* 23 no.2, (1980): 161-62, accessed November 26, 2021, <https://www.jstor.org/stable/3827084>.

⁸ Showalter, 161.

⁹ Peter McCandless, “Liberty and Lunacy: The Victorians and Wrongful Confinement,” 369.

¹⁰ Abraham Kriegel, “Liberty and Whiggery,” *The Journal of Modern History* 52, no.2 (1980): 254, accessed November 29, 2021.

intertwined in this conception of liberty. Further, property was a birthright of the higher classes, and was thus itself intertwined with status and honor.¹¹ Owning property made men independent agents, as they were free from landlords and creditors. This independence was also what made men suitable for office, as it was thought wealthy men would be free from the temptations of bribery. Additionally, landed men had real investments in the nation, and therefore deserved a voice in its governance. Men of no property, on the other hand, were not suited for these kinds of responsibilities. Due to their independence from others, wealthy, propertied men had the right to govern themselves, whereas unpropertied, dependent men, did not. The exclusion of men born into an unpropertied class preserved a hierarchical society, with working class, unpropertied men at the bottom.¹² This hierarchy was thought to be divinely ordained and unalterable: those who were born into the aristocracy were to keep their status, and those born poor were meant to remain as such, without any hope for advancement in the hierarchy. These notions are succinctly demonstrated in an 1850 comment of Lord Palmerston's, who stated that England was a country that "reconciled liberty with order, and in which every class of society accepts with cheerfulness the lot which Providence has assigned to it."¹³ These notions of liberty were prominent throughout nineteenth century Britain.¹⁴ Kriegel acknowledges the origins of this concept, writing:

Those liberties, seemingly applicable to the populace as a whole, had in turn been derived from an older and more restrictive concept. Feudal liberties-whether of the barons, the City of London, the Church, the corporation and freemen of particular boroughs-had signified privileges, rights restricted to particularly defined corporate orders...Such liberties were by definition exclusive and particular. They were bestowed from above by the crown, often with reluctance and, as in the case of Magna Carta, in response to demands of the nobility. Insofar as the nobility of England initiated such concessions from the crown, one must concur ... that modern liberty was in its origin an aristocratic idea.¹⁵

Kriegel cites a long history of liberty as an aristocratic notion here, harkening as far back as the Magna Carta, the document that many would paint as the origin of British freedom and liberty itself.¹⁶ In doing so, Kriegel makes it clear that this exclusionary notion of liberty was

¹¹ It should be made clear that, as property was intertwined with birth status, references to propertied men should in turn be construed as referencing the middle to upper classes, and vice versa.

¹² Kriegel, "Liberty and Whiggery," 277.

¹³ Kriegel, "Liberty and Whiggery," 277.

¹⁴ F.M.L Thompson, "Land and Politics in England in the Nineteenth Century," *Transactions of the Royal Historical Society*, 15, (1965), <https://www.jstor.org/stable/3678815>.

¹⁵ Kriegel, "Liberty and Whiggery," 256.

¹⁶ Tom Bingham, *The Rule of Law* (London: Penguin Books, 2010), 11-13.

intertwined in the very essence of British liberty itself. This exclusionary notion of liberty is exactly what I would offer as a possible explanation as to why pauper lunatics were largely absent from discourses of wrongful confinement during nineteenth-century lunacy panics.

What emerges as a consistent theme in periods of lunacy panics is worries about the profit-making and profit-taking of private run asylums. The intertwining of property and liberty is prevalent here: what concerned lunacy reformers, the public, and the Commissioners in lunacy alike were reports of middle to upper-class Britons having their property, both real and financial, being seized, either by the Crown or malicious family members, after being admitted into a lunatic asylum. The type of liberty being discussed was inextricably linked with property rights. Therefore, it was applied almost exclusively to middle to upper-class Britons. The Commissioners themselves made it clear that what primarily concerned them in their investigations was the running of private asylums, and the need for these private houses to be granted a license. Public houses did not need to be granted a license because they did not profit from the keeping of lunatics.¹⁷ The seizure of property from alleged lunatics and their families was therefore the specific violation of liberty that Commissioners wished to investigate. This concern was reflected in public opinion as well. One 1858 letter to the editor of the *Times* suggests that private lunatic asylums were “mere commercial speculations for the benefit of the proprietors.”¹⁸ Even the Commissioners themselves brought to light this issue of corruption in private houses. In one particular proceeding, the issue was brought to light of the private asylum doctor who kept a wealthy patient in his care, simply for monetary gain.¹⁹ The Earl of Shaftesbury, chairman of the Commissioners, denied that this was a common occurrence, noting that the licensing of private houses allowed the Commissioners to oversee and prevent instances of corruption.²⁰ However, Public opinion did not seem to be swayed by these assurances, and concerns continued that the Commissioners were not effectively preventing instances of false confinement.

¹⁷ “Select Committee on Operation of Regulations for Care and Treatment of Lunatics and their Property. Report, Proceedings, Minutes of Evidence, Appendix, Index.” House of Commons Papers, Volume 3. 1859, Session 1, 11-12.

¹⁸ “The position of the lunatic appears to be one of,” *Times* (London, England), Aug. 19, 1858.

¹⁹ “Select Committee on Operation of Regulations for Care and Treatment of Lunatics and their Property. Report, Proceedings, Minutes of Evidence, Appendix, Index,” Session 1, 22.

²⁰ “Select Committee on Operation of Regulations for Care and Treatment of Lunatics and their Property. Report, Proceedings, Minutes of Evidence, Appendix, Index,” Session 1, 22.

The Alleged Lunatic Friends Society (ALFS) brought many of these public critiques and concerns to the Commissioners' attention. Exclusionary notions of liberty are demonstrated quite well in the interviews of this society, conducted in 1859. This society, composed primarily of former asylum patients (some who believed themselves wrongly incarcerated, others who admitted to suffering from a mental illness), advocated for the better treatment of asylum patients, as well as more cautions being taken in the admittance process.²¹ Multiple members of the ALFS, in their parliamentary testimonies, expressed their concern over wrongful confinement with specific regards to property. Admiral Richard Saumirez, chairman of the ALFS, speaking on Chancery lunatics (a type of lunatic found to be so by inquisition), described a "facility now afforded to designing persons to sue out (issue a summons) commissions of lunacy upon parties who they wish to confine, and whose estates they want to get possession of."²² Saumirez refers to the system of property holding in place for those who were found to be lunatics by a committee. Often heirs of an alleged lunatic would come into possession of that alleged lunatic's property if they were found to be insane and committed to a private asylum. Ann Tottenham, another member of the ALFS, described her very experience with this system. In her interview, she emphasized that "The committee have no idea of the difficulty of persons in such circumstances of getting out; they are without a farthing, all their money is in the hands of the opposite party."²³ The interviews of members of the Alleged Lunatic Friends Society echo those previously cited public concerns that private asylums were "mere commercial speculations" that worked malevolently to deprive landed Britons of their property.²⁴

This focus on the wrongful incarceration of the propertied classes continues throughout the ALFS interviews. Saumirez suggested to the Commissioners that proper financial records ought to be kept of expenses spent on private asylum patients. He cited a case in which, although records stated money was spent on the proper dress of a particular private asylum patient, Saumirez found him to be dressed "like a beggar ... (in clothes that)

²¹ Peter McCandless, "Liberty and Lunacy: The Victorians and Wrongful Confinement," 369.

²² "Select Committee on Operation of Regulations for Care and Treatment of Lunatics and their Property. Report, Proceedings, Minutes of Evidence, Appendix, Index." House of Commons Papers, Volume 7. 1859, Session 2, 7.

²³ "Select Committee on Operation of Regulations for Care and Treatment of Lunatics and their Property. Report, Proceedings, Minutes of Evidence, Appendix, Index." Session 2, 15.

²⁴ "The position of the lunatic appears to be one of," *Times* (London, England), August 19, 1858.

not one of you would allow your servant to appear before you in”.²⁵ Saumirez expressed that “any gentlemen here would feel himself degraded” if he had been dressed in the fashions of this private asylum patient.²⁶ It was deplorable to these reformers to see propertied men of honour reduced to the status of a pauper. This man’s liberty was being denied not simply by physical detainment, but by denying him his property, particularly his items of property that displayed his wealth and status as a gentleman. It is particularly striking that all the members of the ALFS, a society that was meant to be a voice for all those falsely confined, advocated so little for pauper lunatics, despite historical evidence that the working class was the most represented in the lunatic population. The hegemonic hold of exclusionary liberty is displayed quite well by this gap in the discourse of the Alleged Lunatic Friends Society.

Indeed, often the only instances that pauper lunatics were mentioned in discourses was when alleged upper-class lunatics were reduced to the status of paupers. In her 1883 book *The Bastilles of England*, Louisa Lowe, a particularly outspoken lunacy reformer, writes of a woman who had her property taken from her, and was afterwards confined to a public asylum: “In vain she protested that she was a gentlewoman, the widow of Major General B, had very considerable property in India, and a good deal of valuable furniture and other things in Salisbury which she was being despoiled of.”²⁷ Although this woman was eventually freed, her property was “greatly injured and reduced” as a result of this period of false confinement.²⁸ As this case shows, even though notions of liberty were intertwined with property, of which men had primary ownership, women were not excluded from false confinement discourse. Because of their general lack of property rights and legal existence, particularly for married women, women were a particular focus of some (often female) reformers. Although the nuances of the relationship between women and false confinement are beyond the scope of this paper, women cannot be entirely dismissed as a subset of wrongfully confined Britons.²⁹ For purposes of discussing liberty and property, it can be demonstrated that discussions of false confinement of women, too, often focused on liberty as it related to property. Some

²⁵ “Select Committee on Operation of Regulations for Care and Treatment of Lunatics and their Property. Report, Proceedings, Minutes of Evidence, Appendix, Index.” Session 2, 3.

²⁶ “Select Committee on Operation of Regulations for Care and Treatment of Lunatics and their Property. Report, Proceedings, Minutes of Evidence, Appendix, Index.” Session 2, 3.

²⁷ Louisa Lowe, *The Bastilles of England* (London: Crookenden and Co., 1883), 10.

²⁸ Lowe, *The Bastilles of England*, 10.

²⁹ See Elaine Showalter’s article “Victorian Women and Insanity” for a good starting point for further exploration on the relationship between women and lunacy in the period.

women did indeed own property, such as widows who gained property after their husband's death, or women who had property held by trustees. In the case referenced, the forced loss of property of this woman, as well as the fact that she was reduced to the status of a pauper, were the primary concerns of Lowe. Once again, this woman's loss of physical liberty is not the primary point of concern: rather, the loss of property, as well as the loss of status gained through that property, is the true deprivation she experiences.

In order to fully understand this idea of exclusionary liberty, a further examination of contemporary views on the working class is required. In 1834, the new poor law came into effect. To many scholars, this new law can be seen as representing a shifting paradigm in social treatment of the impoverished. Whereas the previous poor law had treated the poor quite paternalistically, the new poor law shifted away from this approach. Peter Bartlett, however, argues that the paternalism of the old poor law continued to thrive in the system of county asylums that housed pauper lunatics.³⁰ A large part of this paternalism manifested itself in the insistence of both the elite and reformers that the poor needed to be morally educated. Until the poor received a proper moral education, they would be unable to properly exercise the same rights and freedoms granted to the middle to upper classes.³¹ Ideas about the morally devoid poor are demonstrated in some of the Commissioners' remarks made in parliamentary sessions. The Earl of Shaftesbury asserted to the members of the session that "the cases of insanity that prevail among the poorer classes arise from their habits of intoxication," whereas causes for insanity among the wealthier classes are chiefly "disordered imagination, hereditary predisposition, the pursuit of money, disappointed ambition, great losses in trade ... (and) over-work."³²

Habits of intoxication were inextricably linked with poor morals in nineteenth century Britain.³³ Reformers worked tirelessly to promote temperance to the working class as it was thought that it would produce a more obedient, hard working, and overall morally superior class of workers in Britain.³⁴ Social control policies of the time that further emphasized the inability of the poor to exercise their own good judgement without guidance from their

³⁰ Peter Bartlett, *The Poor Law of Lunacy*, 21.

³¹ Paul Johnson, *A Shopkeeper's Millennium*, (New York: Hill and Wang, 1978), 81.

³² "Select Committee on Operation of Regulations for Care and Treatment of Lunatics and their Property. Report, Proceedings, Minutes of Evidence, Appendix, Index," Session 1, 7-10.

³³ Johnson, *A Shopkeeper's Millennium*, 79.

³⁴ Johnson, *A Shopkeeper's Millennium*, 81.

employers or social reformers would have reinforced this previously established exclusionary notion of liberty as well.³⁵ Therefore while the Commissioners agree that moral inferiority was primarily the cause of insanity among the poorer classes, the causes among the elite were far more varied, with little reference to any underlying moral causes for their insanity. The Commissioners attitudes towards the poor in these sessions demonstrate Peter Bartlett's argument about the continuation of paternalism in the treatment of pauper lunatics quite well. This paternalistic view of the poor as morally corrupt contributed to the sense that these individuals were not capable of properly exercising unrestricted liberty and explains their absence from wrongful confinement concerns.

The absence of wrongfully confined pauper lunatics from periods of lunacy panic in Victorian Britain is an excellent case study of exclusionary notions of British liberty. Certain Britons were seen as deserving of the privileges of liberty, and others were deemed incapable of properly exercising liberty, if granted it. Aristocratic origins of British liberty itself, as well as paternalistic attitudes towards the poor, helped establish and then uphold these patterns in liberty discourse throughout the nineteenth century. In analyzing discussions and concerns of "lunacy panics," it becomes clear that the property interests of the landed and middle classes were of primary concern to both reformers and lawmakers. The propertied classes were the true inheritors of British liberty, and any violations of these individuals' rights were taken quite seriously. Alleged pauper lunatics, on the other hand, existed on the outskirts of British liberty. They did not inherit, nor were they deserving, of British liberty through property or status, and therefore could lay no claim to its privileges.

³⁵ Johnson, *A Shopkeeper's Millennium*, 81.

Bibliography

- Bartlett, Peter. *The Poor Law of Lunacy*. London; Washington: Leicester University Press, 1999.
- Bingham, Tom. *The Rule of Law*. London: Penguin Books, 2010.
- Johnson, Paul. *A Shopkeeper's Millennium*. New York: Hill and Wang, 1978.
- Kriegel, Abraham. "Liberty and Whiggery." *The Journal of Modern History* 52 no.2 (1980): 253-278. <https://www.jstor.org/stable/1878230>.
- Lowe, Louisa. *The Bastilles of England*. London: Crookenden and Co., 1883.
- McCandless, Peter. "Dangerous to Themselves and Others: The Victorian Debate over the Prevention of Wrongful Confinement." *Journal of British Studies* 23, no.1 (1983): 84-104. <https://www.jstor.org/stable/175621>
- McCandless, Peter. "Liberty and Lunacy: The Victorians and Wrongful Confinement." *Journal of Social History* 11, no.3 (1978): 366-386. <https://www.jstor.org/stable/3786820>.
- Scull, Andrew T. *Museums of Madness*. New York: St. Martin's Press, 1979.
- "Select Committee on Operation of Regulations for Care and Treatment of Lunatics and their Property. Report, Proceedings, Minutes of Evidence, Appendix, Index." House of Commons Papers, Volume 3. 1859, Session 1.
- "Select Committee on Operation of Regulations for Care and Treatment of Lunatics and their Property. Report, Proceedings, Minutes of Evidence, Appendix, Index." House of Commons Papers, Volume 7. 1859, Session 2.
- Showalter, Elaine. "Victorian Women and Insanity." *Victorian Studies* 23 no.2, (1980): 157-181. Accessed November 26, 2021. <https://www.jstor.org/stable/3827084>.
- "The position of the lunatic appears to be one of." *Times* (London, England), August 19, 1858.
- Thompson, F.M.L. "Land and Politics in England in the Nineteenth Century, *Transactions of the Royal History Society*, 15, (1965): 23-44. <https://www.jstor.org/stable/3678815>.