

# Doing Historical Criminology: A Case from Ireland

Lynsey Black, *University College Dublin*

---

Although historical perspectives have greatly enriched criminology as a discipline, such approaches are occasionally difficult to reconcile with the conception of criminology as a fundamentally modernist and evidence-based endeavour which seeks to provide solutions to the problem of crime. Historical criminology takes a more expansive view, couching its concept of relevance beyond the here and now. It seeks to interrogate conventional wisdom and illuminate processes and practices which have become lost in chronologies of criminal justice.

There is no one way of doing historical criminology. As John Braithwaite (2003: 8) argued, there are 'histories of the past' and 'histories of the present'. A 'history of the present' (Foucault 1977/1991: 31) approach, common in scholarship on mass incarceration, involves 'identifying a present-day practice that is both taken for granted and yet, in certain respects, problematic or somehow unintelligible ... and then seeks to trace the power struggles that produced them' (Garland 2014: 373). However, historical criminology and 'histories of the present' are not inevitably one and the same. The field of criminal justice history, for example, generally does not subscribe to a Foucauldian way of doing things (far from it), and instead grounds itself more firmly in 'history' as a discipline.

Approaches broadly understood to be situated within historical criminology have done much to enhance our understanding in the area of women and crime, and the recovery of these perspectives can suggest new ways of thinking.

As an example, Mary Bosworth's (2000) work offers insights into historical continuities of women's confinement, and her excavation of modes of gendered punishment reminds us to look beyond established knowledge. Bosworth uses historical criminology to ground fresh ways of seeing, cautioning that popular accounts of the birth of the prison neglected the experience of women's confinement historically, consideration of which would necessitate shifts in our conceptions of periodisation.

Further, as Knepper and Johansen commented (2016: 9), histories of crime and punishment inevitably go hand-in-hand with social history. In this field then, the histories of marginalised groups such as women, or the working-classes, can be re-evaluated and brought to the fore.

In an Irish context, historical perspectives on crime have been effective at illuminating the lived experiences of marginalised women. The repercussions of this scholarship have been two-fold: it has undertaken the essential work of offering new historical perspectives on forgotten groups, and it has fed into ongoing debates in Ireland about

the treatment of women historically, and the present need to make reparations and address women's position in Irish society. The work of Elaine Farrell (2013), Cliona Rattigan (2012), and Karen Brennan (2013), for example, provided a comprehensive profile of women who killed their infants in Ireland from the mid-nineteenth- to the mid-twentieth-century, outlining the social and economic contexts of infant murder, and tracing official responses and public narratives on these cases. Work such as this has explored the fault-lines of acceptable gender behaviours in Ireland at this time, specifically related to sexuality and morality. My own work on women sentenced to death in post-independence Ireland (Black 2018), suggests a new lens through which to consider the punishment of women in twentieth-century Ireland, particularly Ireland's death penalty regime and its punishment of women convicted of murder.

In the decades after independence from Britain in 1922, a total of 22 women were convicted of murder and sentenced to death in Ireland, only one of which was executed. In contrast, 34 of 68 condemned men were executed (Doyle and O'Donnell 2012). The figures suggest leniency and significant chivalric gender protections. However, the treatment of the 21 women reprieved from sentence of death also shows a paternalistic and repressive official response. Of the 21 women, 11 were released from prison on the condition that they enter a religiously run institution, many of which were Magdalen laundries. A further woman was held in prison for a protracted period of time with the stated rationale that her release would only be considered after she had passed child-bearing age. This woman's release was eventually granted following her acceptance of a paid position in another religious institution. Many of the women released to religious institutions spent considerable periods of time there, some until their death.

This research therefore complicates the idea that greater leniency was shown to women who committed murder in this period. While men were more likely to be executed, reprieved men were not subject to entanglement in the network of gendered religious sites which held women in the decades post-1922. Although there were only a handful of women in prison in mid-twentieth-century Ireland, historical approaches can trace alternative sites of confinement. This endeavour can also expose what 'deviant' meant for criminal justice and official agencies in this period. In this case, understandings of deviance related not so much to crime as to contraventions of morality.

In addition to recovering historical practices of criminal justice and punishment, works such as those outlined above have also offered a means of understanding many of the issues at the centre of Irish public discourse today. Much of this debate has focused on the Magdalen laundry.

Magdalen laundries were originally established in Ireland in the late-eighteenth-century, primarily as refuges for 'fallen' women (Smith 2007). Over time the purposes of the laundries shifted somewhat, and following Irish independence, the institutions became part of the State's response to unmarried motherhood. They formed one component of a continuum of institutions used to respond to populations perceived as socially unfit, chief of which were women who became pregnant outside of marriage. Among its many cohorts, were women who had been criminally convicted, and for whom a laundry was viewed as more appropriate than prison (Brennan, 2013).

The last Magdalen laundry closed its doors in 1996, although the numbers of women in these institutions had dwindled in the decades prior to this date. More recently however, Irish society has begun to grapple with the implications of 'coercive confinement', a practice which was typified by the laundries (O'Sullivan and O'Donnell 2007). The growing movement to fully acknowledge the harms perpetrated by such confinement, a movement largely fuelled by activism, advocacy and the work of victim/survivors (see the work of Justice for Magdalenes in this regard), has led to government inquiries, which have produced successive reports, a State apology, and a reparative scheme established for victim/survivors. However, official acceptance has often been grudging. The McAleese Report (the final report on the State's role in Magdalen laundries) was partial, resistant to the women's narratives, and defensive of State involvement as an attempt to minimise culpability. However, analysis of Ireland's post-1922 criminal justice system clearly shows State acceptance of religious figures as trusted and expedient dispensers of punishment in the case of women, and of religious run institutions as a natural extension of the traditional criminal justice system. An historical approach can read the government's persistent refusal to fully acknowledge State wrongdoing in this matter as fundamentally enmeshed with its 'outsourcing' of punishment to religious organisations. Decisions to place women outwith the traditional criminal justice system, into the care of religious figures, absolved State actors from their role in this regard, and traces of this disavowal of responsibility remain present in official discourse today. Meanwhile, the paternalism of these processes, framed by conceptualisations of religious confinement as benevolent, can still be traced in religious denials of harm or wrongdoing.

Ireland provides an example of the far-reaching implications of historical criminology. The Irish government, and indeed the Irish public more generally, have for some years been attempting to adequately respond to and cope with accounts of the historic ill-treatment of women. Much of this ill-treatment was facilitated in a network of institutions which effectively operated as a shadow criminal justice system, with institutions such as Magdalen laundries doubling for prisons in the case of women. Further, historical criminology in the Irish case has facilitated an explicitly interdisciplinary approach, creating space in the linkages to be found between history, law and criminology, and drawing on the work of activists and campaigners. In the connections between these occasionally disparate approaches, we have asked the questions of who we punish, and why we punish.

Black, L (2018) "On the other hand the accused is a woman...": Women and the death penalty in post-independence Ireland,' *Law and History Review*, 36(1): 139-172.

Bosworth, M (2000) 'Confining femininity: A history of gender, power and imprisonment,' *Theoretical Criminology*, 4(3): 265-284.

Braithwaite, J (2003) 'What's wrong with the sociology of punishment?' *Theoretical Criminology*, 7(1): 5-28.

Justice for Magdalenes: <http://www.magdalenelaundries.com/> [accessed 19 June 2018].

Brennan, K M (2013) “A Fine Mixture of Pity and Justice”: The Criminal Justice Response to Infanticide in Ireland 1922-1949’, *Law and History Review*, 2013, 31: 793-841.

Doyle, D and O’Donnell, I (2012) ‘The Death Penalty in Post-Independence Ireland,’ *The Journal of Legal History*, 33(1): 65-91.

Farrell, E (2013) ‘A Most Diabolical Deed’: Infanticide and Irish Society, 1850-1900 (Manchester University Press).

Foucault, M (1977/1991) *Discipline and Punish: The Birth of the Prison* (Penguin).

Garland, D (2014) ‘What is a “history of the present”? On Foucault’s genealogies and their critical preconditions,’ *Punishment and Society*, 16(4): 365-384.

Knepper, P and Johansen, A (2016) *The Oxford Handbook of the History of Crime and Criminal Justice* (Oxford University Press).

O’Sullivan, E and O’Donnell, I (2007) ‘Coercive confinement in the Republic of Ireland,’ *Punishment and Society*, 9(1): 27-48.

Rattigan, C (2012) ‘What Else Could I Do?’: Single Mothers and Infanticide, Ireland 1900-1950 (Irish Academic Press).

Smith, J M (2008) *Ireland’s Magdalen Laundries and the Nation’s Architecture of Containment* (Manchester University Press).