Gendering the Condemned?

Women and Capital Punishment in Ireland Post-1922

Lynsey Catherine Black

Submitted for the Degree of Doctor of Philosophy

University of Dublin, Trinity College

Declaration

I declare that this thesis has not been submitted as an exercise for a degree at this or any other university and it is entirely my own work.

I agree to deposit this thesis in the University's open access institutional repository or allow the library to do so on my behalf, subject to Irish Copyright Legislation and Trinity College Library conditions of use and acknowledgement.

Signed: _____

Lynsey Black

Gendering the Condemned? Women and Capital Punishment in Ireland Post-1922

Lynsey Catherine Black

This thesis explores the cases of the 25 women sentenced to death in Ireland post-1922. It represents the first research focusing exclusively on women and capital punishment in Ireland, and examines how the death-sentenced women were discursively constructed by the criminal justice system.

Through comprehensive archival research, the thesis engages in an analysis of the cases, exploring how the individual women were constructed according to themes of infanticide, mercy, confinement, pathology, and appropriate femininity. This analysis seeks to identify the prevailing discourses which informed understandings of the condemned women, and in turn situates the cases within the broader historical context of the punishment and control of women in Ireland. The individual cases are analysed within the social and cultural context of Irish society, and of women's place in that society; it is argued that their cases can therefore be read as markers of their place and time.

The thesis examines the gendering processes at work in the construction of the condemned women, and how these informed the criminal justice responses in their cases. The thesis thus offers a gendered analysis of the death penalty in Ireland. Through this analysis, along with themes of class and rurality, tropes of domesticity, motherhood, respectability, sexuality, masculinity and pathology emerge. It is argued that these themes are influenced by, and indicative of, a particularly Irish form of paternalism rooted in the patriarchal society of the time. This paternalism, understood as representing the protections afforded to women as a 'class' of persons premised on their inferior status, is evident in the differential treatment of the women herein by the criminal justice system. All but one of the 25 women had their sentences commuted; many were confined for lengthy periods in semi-penal sites; 'mercy' was therefore extended to them in a way which often led to a particularly punitive outcome. The exercise of paternalism meant that those women sentenced to death in post-Independence Ireland were punished differently, punished severely, and punished as women.

Acknowledgements

I would like to thank Ivana Bacik for her supervision, help and friendship over the past four years. I would also like to thank my examiners, Lizzie Seal and Eoin O'Sullivan, for their guidance and support.

The staff of the National Archives of Ireland provided me with much-needed directions as I attempted to find my way around; particular thanks to Mary Mackey and to the counter staff, Ken, Dave, Paddy, Christy and Michael. In the Dublin Diocesan Archives, too, Noelle Dowling happily brought me box after box of papers.

Aisling Brennan at the Department of Justice facilitated access to key Department of Justice files. Joe Goode, at the Department of An Taoiseach, provided me with access to the on-site archives, as well as coffee, biscuits and banter.

Huge thanks to Ray Kavanagh, who took the time to sit down with me and discuss Mamie Cadden. Thanks also to Elaine Farrell who was so generous with her time and knowledge. For their responses to unsolicited emails with random queries, thanks to Tom Reddy, Bill Vaughan, Ian O'Donnell.

For very generous access to documentaries, a massive thanks to Brigid Uí Shearraig at TG4. In RTÉ Archives, thank you to Vicky Moran and Hilary Paolozzi. My gratitude goes to Neil Ward also, who allowed me to take up some space in his office and research the *Garda Review* archives. I would like to thank Sean Reynolds, for taking hours out of his day to walk me through the museum at Mountjoy Prison, and for giving me access to the 'Death Book'.

Six months before submission I gave a seminar at the University of Edinburgh. There was no better preparation for the beginning of the writing-up period. Thank you must go out to those who attended and asked me such good questions, thereby making my brain work. I am eternally grateful to Louise Brangan for her enthusiasm, insight and friendship. Thanks also to Becky Hewer who acted as willing and incisive discussant. Big thanks also to Michael O'Reilly for the hospitality and brownies!

To the PhDs of Phoenix House, thank you for the collegiality and the chat. Particular thanks to Sarah Bryan O'Sullivan, Nóra Ní Loinsigh, Kate de Contreras, Stuart MacLennan and Peter Dunne. To my PhD peer support group, Colette Barry and Kate

O’Hara, thank you! Thank you also to my seminar buddy, Eoin O’Connor, for sanity in marking.

Huge thanks to Donal Coffey and David Doyle who gave good advice and read my drafts. Thanks also to Mark Coen, who shared his knowledge of archives and gave me a lot of tips, and to Mary Rogan for helpful advice and support.

The Arthur Cox Studentship provided two funded years, for which I cannot express sufficient gratitude. For financial support, I was also very grateful for a travel and research bursary from the Irish Legal History Society. The Trinity Travel Trust also kindly provided me with funds to travel to the European Society of Criminology Conference, in Budapest, in 2013.

I would very much like to thank Catherine Finnegan, the Law School fixer. I would like to thank also Mairead Morrissey, Anne Burke and Kelley McCabe. I owe a debt of gratitude to Liz Heffernan also, for her kindness and encouragement.

I would like to thank my friends, for being lovely and supportive and, amazingly, interested in this project for four years. Thank you to Sam Sellars (who became Steele during those years!), Patricia O’Driscoll, Amy Watchorn, Charly McGaughey, Frank O’Riordan, Gerry Steele, Dan Moss, Davina Gray, Rob O’Farrell, Tom Morton and Martina Hopkins.

To my parents, Don and Caroline Black, who, I’m sure, were fairly confident their daughter would have left college by now. To my brother Trevor, who met and married Hazel in the time it took me to do this. And finally, to Emmett Quanne, for everything.

Gendering the Condemned? Women and Capital Punishment in Ireland Post-1922

Table of Contents

Declaration *ii*

Abstract *iii*

Acknowledgements *iv*

Introduction

Research Rationale and Aims **1**

Findings **3**

Thesis Layout **6**

Further Research **8**

Methodology

Introduction **9**

Materials Used **10**

Ethical Considerations **12**

Limitations **14**

Discourse Analysis **15**

Historical Criminology **18**

Women's History **20**

Feminist Methodology and Feminist Criminology **23**

Feminist Methodology **23**

Feminist Empiricism **24**

Standpoint Feminism **26**

Postmodern Feminism **27**

Conclusion **31**

Chapter One

Women Who Kill

Introduction **32**

Women Who Kill: Public Notoriety and Academic Ambivalence **32**

Chivalry **34**

Double Deviance **36**

Pathology **39**

Infanticide **44**

Informal Social Control **48**

Explaining Women Who Kill **51**

Conclusion **53**

Chapter Two

The Death Penalty

Introduction **55**

Part One: The Death Penalty **56**

Decline and Abolition **57**

Decline and Abolition of the Death Penalty in Great Britain **57**

Decline and Abolition of the Death Penalty in Ireland **59**

European Decline **65**

American Exceptionalism **67**

Part Two: Women and the Death Penalty **69**

Voyeurism and the Condemned Woman **69**

Women and the Death Penalty: A Differential Punishment **71**

Women and the Death Penalty: An Inappropriate Punishment **73**

Women and the Death Penalty in the US: A Contemporary Case **77**

A Discriminatory Penalty **78**

Going Beyond Chivalry **80**

Conclusion **84**

Chapter Three

The Crimes, Punishment and Confinement of Women in Ireland

Introduction **86**

The Position of Women in Ireland **87**

Women and Crime in Ireland **90**

Women and Crime in Ireland Pre-1922 **90**

Women and Crime in Ireland Post-1922 **92**

Homicide **95**

Infanticide **96**

Punishment and Confinement of Women **102**

Semi-Penal Sites of Confinement **102**

Psychiatric Institutions **102**

Magdalen Laundries **105**

Other Semi-Penal Sites of Confinement **108**

Imprisonment **110**

Women and the Death Penalty in Ireland **112**

Conclusion **115**

Chapter Four

Case Studies: Women Sentenced to Death in Ireland Post-Independence

Introduction **118**

Contextual Overview **119**

Outcome of Cases **124**

Profile of the Crime **128**

Victims **128**

Means of Killing **131**

Motive **132**

Location **135**

Profile of the Women Sentenced to Death **138**

Age **138**

Marriage, Motherhood and Family **139**

Occupation and Class **142**

Religion **145**

Previous Convictions **146**

Conclusion **148**

Chapter Five

Infanticide

Introduction **152**

Cases **153**

Mercy **156**

Aggravating Features **161**

Moral Panic **165**

Infanticide as a Proxy for Illegitimacy **171**

Stigma and Shame of Illegitimacy **173**

Class and Community **178**

Motherhood **183**

Conclusion **187**

Chapter Six

Mercy

Introduction **190**

Formal and Informal Processes of Mercy **190**

Rationales for Mercy **194**

Age **195**

'Low Mentality' **196**

Motherhood **197**

The Influence of Men: Infanticide and Failure to Provide **199**

Legal Reasons and Doubt **201**

Religion **202**

Garda Reports **203**

Family and Community **204**

Other Rationales **206**

Public Responses **207**

An International Response: Marie Murray **209**

The Limits of Mercy: Annie Walsh (1925) **213**

Mercy by Gender **218**

Conclusion **220**

Chapter Seven

Confinement

Introduction **224**

Prison **226**

Petitioning of Reprieved Women **229**

Religious-Run Institutions **236**

Processes of Discharge and Entry to a Religious-Run Institution **237**

Criminals and Sinners **240**

Time Spent Coercively Confined in Religious-Run Institutions **242**

Hope of Release **245**

'Wantedness' **246**

Family Suitability **247**

Infantilisation **248**

Productivity **250**

Garda Reports **251**

Informal Confinement **253**

Conclusion **256**

Chapter Eight

Pathology

Introduction **260**

Certified Insane Post-Conviction **262**

Elizabeth Doran **262**

Mamie Cadden **265**

Gendering Insanity: The Case of Mary Agnes Bernadette Daly **268**

Hereditary Insanity: The Importance of the Family **271**

Insanity in the Criminal Trial:

Failing to Meet the Insanity Threshold **274**

Special Verdict **274**

Sub-Psychiatric Discourses: Low Mentality **275**

Sub-Psychiatric Discourses:

The Cataclysm of Childbirth and Female Biology as Disease **280**

Discourses of Pathology as Paternalism **286**

Conclusion **287**

Chapter Nine

Appropriate Femininity

Introduction **290**

Vulnerability **291**

Normative Gender Roles **295**

Betrayal of Domesticity: The Poisoner **298**

Masculinity **300**

Masculinity as Justification for a Harsher Criminal Justice Response **302**

Passive Sexuality **304**

Reputation **309**

Appearance **311**

Conclusion **312**

Conclusion: Gendering the Condemned

Introduction **315**

Methodology **318**

Findings **321**

The 25 Cases **321**

Condemned Women in Context **323**

Gendered Punishment **327**

Coercive Confinement **333**

Paternalism and Patriarchy **339**

Conclusion **344**

Appendix **347**

Bibliography **367**

List of Tables

Table 4.1: Number of Women Sentenced to Death by Decade	120
Table 4.2: Age Ranges of Women Sentenced to Death	138
Table 4.3: Previous Convictions	147
Table 5.1: Age of Infant Victims	153
Table 5.2: Women Who Gave Birth in Institutions	154
Table 5.3: Women Sentenced to Death for Infanticide	155
Table 7.1: Time Spent in Prison by Women Convicted of the Murder of an Adult	226
Table 7.2: Time Spent in Prison by Women Convicted of Infanticide	227
Table 7.3: Women Conditionally Discharged to Religious-Run Institutions	237
Table 7.4: Time Spent in Religious-Run Institutions	242
Table 7.5: Total Time Confined in Prison and Religious-Run Institutions from Date of Conviction	243
Table 7.6: Time Spent by Reprieved Women in Prison and Religious-Run Institutions	259

Explanatory Note on Terminology:

The term infanticide will be used throughout to refer to infant murder, unless when explicitly used to refer to 'infanticide' as a newly established non-capital offence of the twentieth-century. Despite legislative reforms not designating the term one of specific legal significance in Ireland until the Infanticide Act 1949, the term infanticide had been used from the mid-nineteenth-century to mean infant murder, and this use is adopted herein to reflect the common usage within the archives.

Introduction

Research Rationale and Aims

This thesis has a number of aims. It seeks to investigate cases of women sentenced to death in Ireland post-1922 and to provide a comprehensive account of these capitally convicted women from original sources. The thesis represents the first research on women sentenced to death in Ireland post-1922.[1] This account will first address the question of who these women were; the crimes for which they were capitally convicted; and, how they were disposed of by the criminal justice system. The thesis further seeks to provide an in-depth qualitative analysis of these cases, exploring how the death-sentenced women were discursively constructed by the criminal justice system. This analysis seeks to identify the prevailing discourses in order to situate the cases within a broader context of the punishment and control of women in Ireland. In short, the thesis examines the gendering processes at work in the construction of the condemned women and how these informed the criminal justice responses.

To achieve these aims, extensive archival research was undertaken, using the methodological approaches of discourse analysis, historical criminology and feminist epistemology. David Garland stated that capital punishment is 'as much about discourse as it is about death';[2] therefore, the dominant discourses on capital punishment as it was applied to women in Ireland post-1922 will be identified from the archival material.

The thesis also marks the reclamation of 'muted' voices; to this end the research proceeds from a feminist epistemological perspective. Anette Ballinger has declared a need to unearth the stories of such 'muted' women in her account of the women executed in the twentieth-century in England and Wales.[3] Ballinger has noted that myth and misrepresentation can overwhelm these figures. Likewise, Mary Bosworth has concluded that the voices of women in history have been excluded from traditional accounts; the inclusion of this perspective can enrich the study of punishment particularly.[4] The

[1] Throughout the thesis, the terms post-1922 and post-Independence are used interchangeably.
[2] David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Oxford University Press 2010) at 7.
[3] Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000).
[4] Mary Bosworth (2001) 'The Past as a Foreign Country: Some Methodological Implications of Doing Historical Criminology', *British Journal of Criminology*, 41(3), 431-442.

characterisation of the voices of the death-sentenced women herein as 'muted' is particularly relevant considering the period of 'uncovering' of the treatment of vulnerable persons which has been occurring in Ireland over the past 20 years.[5] In this vein, the thesis provides a further perspective on the treatment of persons coercively confined by the Irish State, in the decades following Independence.

The research herein attempts to identify and expose the normative limits for all women in Ireland post-1922, particularly through examination of the punishment and control of capitally convicted women. This discrete cohort of cases, representing the pinnacle/nadir of official censure, can delineate the boundaries which existed more broadly regarding ideal womanhood. The cases of women sentenced to death within the current research represent a broad spectrum of women who kill; ranging from women who killed infants and women who killed husbands, to cases of women who killed for personal gain, as well as women who killed for no discernible motive. The research therefore spans cases which are 'not culturally unthinkable',[6] as well as 'unusual cases', a cohort identified by Lizzie Seal which includes women who cannot be accommodated within notions of women as mother, or within heteronormative structures.

A gendered analysis of the death penalty in Ireland is developed throughout this thesis; this gendered perspective can enrich the understanding of capital punishment in Ireland post-1922. Some existing literature examines the death penalty in post-Independence Ireland,[7] but no study encompasses a gendered enquiry. In addition to accounts of capital punishment post-1922, other works exist which relate explicitly to capital punishment in Ireland from pre-1922 or are substantially concerned with this within a broader study.[8] However, David M Doyle and Ian O'Donnell write that 'The history of capital punishment

[5] See for example, Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999); Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).
[6] Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010) at 2.
[7] Gerard O'Brien, Capital Punishment in Ireland, 1922-1964, NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006); David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independent Ireland', *Journal of Legal History*, 33(1), 65-91; Tim Carey, *Hanged for Murder: Irish State Executions* (Collins Press 2013); David M Doyle and Ian O'Donnell (2014) 'A Family Affair? English Hangmen and a Dublin Jail, 1923-54', *New Hibernia Review*, 18(4), 101-118; David Matthew Doyle (2015) 'Republicans, Martyrology, and the Death Penalty in Britain and Ireland, 1939-1990', *Journal of British Studies*, 54(3), 703-722.
[8] Brian Henry, *Dublin Hanged: Crime, Law Enforcement and Punishment in Late-Eighteenth-Century Dublin* (Irish Academic Press 1994); WE Vaughan, *Murder Trials in Ireland, 1836-1914* (Four Courts Press 2009).

in post-Independence Ireland has received scant scholarly attention.'[9] Further, works on capital punishment in Ireland have focused on the male experience. Particular cohorts of women have been studied, but not as part of an explicit analysis of women and the death penalty. Therefore, works on infanticide,[10] insanity and murder,[11] and broader texts relating to violence in Ireland have involved discussion of subsets of death-sentenced women.[12] Throughout the thesis, it has been sought to examine the way in which all women sentenced to death post-Independence were discursively constructed as gendered subjects within the criminal justice system, particularly through processes that may be described as paternalistic.

Indeed, a paternalistic approach was identified throughout much of the official and public discourses on condemned women. Paternalism is understood as the protections offered to women as a 'class' of persons which is premised on their lesser status; paternalism has been identified as inextricably linked to patriarchal ideology.[13]

Findings

Twenty-five women were sentenced to death in Ireland post-Independence. Of these 25 women, one was executed, three women had their capital convictions quashed or altered in some way, and 21 women had their sentence of death commuted to a sentence of penal servitude for life.

The few existing accounts of capital punishment in post-Independence Ireland refer to 22 women capitally convicted during this period;[14] however, inclusion of the three women who successfully appealed their capital conviction widened the analysis to include *all*

[9] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independent Ireland', *Journal of Legal History*, 33(1), 65-91, at 65.
[10] Clíona Rattigan, '*What Else Could I Do?': Single Mothers and Infanticide, 1900-1950* (Irish Academic Press 2012); Karen Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35; Elaine Farrell, *'A Most Diabolical Deed': Infanticide and Irish Society, 1850-1900* (Manchester University Press 2013).
[11] Pauline Prior, *Madness and Murder: Gender, Crime and Mental Disorder in Nineteenth-Century Ireland* (Irish Academic Press 2008).
[12] Carolyn Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999).
[13] For example by Elizabeth F Moulds (1978) 'Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System', *Western Political Quarterly*, 31(3), 416-430. On patriarchy as a feminist concept see, Gerda Lerner, *The Creation of Patriarchy* (Oxford University Press 1987); Sylvia Walby, *Theorizing Patriarchy* (Basil Blackwell 1990).
[14] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91.

women sentenced to death post-1922. The removal of these three cases would have created an artificial void. Although the quashing of capital convictions operated retroactively in legal terms, the recovery and inclusion of these women acknowledges their experiences of capital conviction. The inclusion of all cases of women who were sentenced to death further realises the aim of restoring these 'muted' and marginalised voices.

Fourteen of the 25 women were sentenced to death for the murder of an infant. Prior to the enactment of the Infanticide Act 1949 in Ireland, the murder of an infant by the mother was characterised as a capital offence of murder. Of the 14 women herein, 11 were capitally convicted for the murder of their own infant and three had killed an infant within the family. The particular theme of motherhood and lethal violence thus emerges. Of the 13 infant victims within the sample,[15] 12 were illegitimate. The use of infanticide as a proxy for illegitimacy was evident from the differential criminal justice responses to the murder of an infant, according to whether the infant was illegitimate. A paternalistic approach was evident in the official discourses on these women, which supports the findings from the existing literature on infanticide in Ireland.[16]

A paternalistic approach was also evident in the official reluctance to execute women which emerged from the research. Women sentenced to death in Ireland post-1922 were much more likely to benefit from the official exercise of mercy through reprieve than to be executed. The reluctance to execute women was expressed in official departmental documents, and was often mirrored in the public discourses. However, this official mercy was borne of paternalism. Therefore, to brand this mercy as leniency is to obscure the complexities of how death-sentenced women were dealt with. To this end, the informal coercive control of reprieved women in semi-penal, religious-run institutions is another stark finding from the research. The existence of a shadow network of semi-penal institutions beyond the formal prison system facilitated the confinement of reprieved women, often for very long periods of time. The thesis therefore disputes the notion that women sentenced to death in Ireland post-1922 were necessarily treated with leniency. Instead, the confinement of women whose sentence of death had been commuted often extended well beyond their discharge from prison.

[15] Two sisters were capitally convicted for infanticide.
[16] Clíona Rattigan, '*What Else Could I Do?': Single Mothers and Infanticide, 1900-1950* (Irish Academic Press 2012); Karen Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35; Elaine Farrell, *'A Most Diabolical Deed': Infanticide and Irish Society, 1850-1900* (Manchester University Press 2013).

Paternalism was also evident in the pathologisation of death-sentenced women. The use of discourses of pathology served to minimise the women's agency and culpability, facilitating the extension of official mercy through reprieve. Of the 25 condemned women, two were certified as insane post-conviction. However, the pathologisation of women was more often achieved through oblique references to a woman's 'low mentality' and innuendo. Pathologisation was also evident particularly in relation to women who killed illegitimate infants. In these cases, the pathologisation of the female reproductive system and childbirth emerged. However, this pathologisation was not overt, and the use of sub-psychiatric discourses was also common. The application of these sub-psychiatric discourses forged an association between illegitimacy and abnormality.

This association also served to characterise the expression of female sexuality as indicative of abnormality; a readiness to pathologise the expression of sexuality in unmarried women emerged from the research. The cases herein therefore demonstrated that appropriate femininity in Ireland was understood as sexually passive – unmarried, widowed or separated women were not tolerated as sexual beings. Women who did express sexuality beyond these limits were either subject to discourses of pathologisation or demonisation. Sexual expression was only officially contemplated as existing within the confines of marriage.

The gendering of the condemned women emerged throughout. The standard of appropriate femininity was evident in the official discourses in the privileging of the roles of the good wife and the good mother, and in the construction of ideal womanhood as vulnerable. Deviation from normative gender roles rendered the condemned women as inexplicable and 'Other'.

The above findings were all mediated through the various sites of identity occupied by the condemned women. Through an intersectional approach to the analysis, specific themes of class and geography emerged. The overwhelming majority of the women within the sample lived in rural areas, and were understood as belonging to the 'labouring classes'. These women were often marginalised, both socially and economically, and their lived experiences emerged forcibly from reading their cases.

Throughout the thesis, a particularly Irish form of paternalism emerged rooted in the patriarchal society of Ireland post-1922. This manifested in the recourse to

institutionalisation for reprieved women. This finding echoes the coercive confinement thesis which has formed the subject of recent academic work in Ireland.[17] This Irish paternalism can also be discerned in the processes by which a newly independent nation reconstituted its national identity and conceptualised its ideal womanhood on foundations of piety and purity.

Thesis Layout

The thesis begins with a discussion of the methodology used, and the archival material examined. This chapter also provides a synopsis of the theoretical and epistemological concerns underlying the research, discourse analysis, historical criminology, and feminist methodology and criminology.

A review of the relevant literature is then provided in three chapters. The theoretical perspectives and criminal justice responses to women who kill are presented in Chapter One. This chapter demonstrates the dominant discourses which have informed the cultural construction of, and official responses to women who kill, concentrating on the areas of chivalry, double deviance, pathology, infanticide, and informal social control. Chapter Two outlines literature on the death penalty. The chapter considers the decline and abolition of capital punishment in the nineteenth- and twentieth-centuries in Great Britain, Ireland and Europe. The chapter then reviews the literature on the experience of women and capital punishment, including contemporary literature on the application of the death penalty in the US, noting the arguments that the death penalty is applied as a gendered punishment. In Chapter Three, the literature on the crimes, punishment and confinement of women in Ireland is examined. This chapter considers the social and cultural factors shaping the responses to female offending, and reviews the pattern of women's crime in Ireland, both pre- and post-1922. The chapter also considers the use of semi-penal and penal sites of confinement and modes of punishment for women in Ireland concentrating particularly on the use of semi-penal sites, imprisonment, and the death penalty as it applied to women in Ireland.

The thesis then presents the findings from the research. Chapter Four provides an initial overview of the cases of the 25 women sentenced to death in Ireland post-1922 and

[17] See, for an overview of this thesis, the introductory and concluding chapters in Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).

provides contextual and descriptive information relating to the offences committed, as well as a profile of the death-sentenced women, and the criminal justice processes in each case. Hereafter, in five chapters, the dominant themes which shaped the discourses on women and capital punishment in Ireland post-1922 are identified and elaborated. Chapter Five outlines the cases of infanticide, and presents an analysis of the 14 cases in which women were sentenced to death for the murder of an infant. Chapter Six presents an analysis of the exercise of mercy, noting the formal and informal processes at work in the reprieve of death-sentenced women. Chapter Seven explores the confinement of the 21 reprieved women within the sample, presenting findings on their confinement in both penal and semi-penal sites, and the particular reliance on religious-run institutions. Chapter Eight considers the pathologisation of women sentenced to death, and presents analysis of two cases of women certified insane post-conviction. The chapter further explores the use of pathology throughout, and notes the differential pathologisation of women according to class and other factors. Chapter Nine considers the processes by which condemned women were interpreted according to a standard of appropriate femininity. This chapter focuses particularly on the way in which these gendering processes impacted upon the women, constructing them in relation to standards of ideal womanhood and rendering them passive bodies through the exercise of paternalism and the denial of sexuality.

The thesis then closes with an overview of the findings. This chapter argues that the women within the sample were made legible by their position in post-1922 Irish society, such as through reference to rurality and class. However, the thesis argues that the condemned women were constructed and understood principally by reference to their gender. The closing chapter reviews the finding that the condemned women were constructed as gendered subjects, how these gendering processes informed the punishment of the women and how such processes were underwritten by a seemingly benevolent Irish paternalism. This paternalism was evident throughout, in cases of infanticide, in the reluctance to execute women and the simultaneous confinement of women in semi-penal sites, in the pathologisation of the death-sentenced women and in the abiding template of appropriate femininity to which the women were held. The thesis argues that this paternalism is borne of the particularly private patriarchy of Irish society post-1922.

Further Research

Finally, the thesis presents a recovery, account and gendered analysis of women and the death penalty in post-Independence Ireland, something which had not been previously undertaken. However, the researcher acknowledges the inevitable roads not taken, which must exist within every piece of research. The formal limitations of the doctoral thesis necessitate that not all areas of enquiry can be engaged with equal focus. For example, although extensive press reporting was included on each of the 25 death-sentenced women, including the Garda[18] investigations and the criminal trials, there has been no scope to include a detailed analysis grounded solely from the perspective of how these cases were constructed by the press. This is flagged particularly as an area of further research beyond this thesis. Similarly, the broader cultural reimagining of these 25 condemned women, incorporating the inclusion of their cases in true crime works, in television documentaries and in works of fiction, presents an interesting avenue for further research.[19]

Further, the research presents an important standalone analysis of the 25 cases of death-sentenced women. Understanding what the research herein 'is', also entails understanding what this research 'is not'. The thesis does not present a comparative approach. Therefore, the research herein is not presented in comparison to men sentenced to death in post-Independence Ireland, or indeed with women sentenced to death in Northern Ireland post-partition, nor are the cases of women sentenced to death pre-Independence included. Further, the researcher explores the 25 cases of women sentenced to death in post-Independence but does not include those cases in which women were capitally tried and acquitted.

These suggested avenues of further research can further illuminate a gendered analysis of capital punishment in Ireland. However, the thesis concentrates on the recovery, description and analysis of a discrete cohort without reference to comparison, but more purely as a means of first understanding one group before it can be compared with another. This is justified by reference to the absence of pre-existing research on this cohort.

[18] An Garda Síochána/Garda/Gardaí/Guard refers to the police service established in Ireland following Independence. This was a centralised organisation, headquartered in Dublin.

[19] For example, in Marlin Shipman, *'The Penalty is Death': US Newspaper Coverage of Women's Executions* (University of Missouri Press 2002), or in the work of Lizzie Seal which explored capital punishment in Britain from a cultural perspective, see Lizzie Seal, *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory* (Routledge 2014).

Methodology

Introduction

The thesis sets out to explore the cases of women sentenced to death in Ireland post-Independence and to examine how these women were discursively produced and understood. This chapter offers a discussion of the key theoretical perspectives which informed the research. Discourse analysis was employed as a means of interrogating the sources; this methodological approach acknowledges that subjects are constructed and made intelligible through discourse.[1] Discourse analysis was considered appropriate in this case due to the proliferation of official documentation produced by the criminal justice system, government departments and the press, which provided a means of analysing the discursive production of the death-sentenced women.

As the research herein necessitated the extensive use of archival sources, the methodological approach taken was also cognisant of historical methodology. The chapter summarises the key issues when doing historical research, particularly within a criminological context. The business of governance necessarily creates legacies of paperwork, an inevitable output of bureaucracy and institutional practices;[2] texts are 'a pervasive and naturally occurring feature of everyday and institutional life'.[3] The emergence of complex bureaucracies in the nineteenth-century required legacies of paperwork,[4] which renders archives a rich trove of material. Discourse analysis, the interpretive process to which these documents will be submitted, is 'intuitive and reflexive', allowing for interpretations based on informed readings of these archives.[5] Finally, the research was conducted from a feminist methodological perspective, which sought to explore how the discursive construction of the death-sentenced women was achieved by reference to gendered power relations. This chapter also reviews feminist methodology and summarises its key tenets.

---

[1] Jonathan Potter, 'Discourse Analysis', in Melissa Hardy and Alan Bryman, eds, *Handbook of Data Analysis* (Sage 2004).
[2] John Scott, *A Matter of Record: Documentary Sources in Social Research* (Polity 1990).
[3] Jonathan Potter, 'Discourse Analysis', in Melissa Hardy and Alan Bryman, eds, *Handbook of Data Analysis* (Sage 2004).
[4] Barry Godfrey, 'Historical and Archival Research Methods', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012).
[5] John Muncie, 'Discourse Analysis', in Victor Jupp, ed, *The Sage Dictionary of Social Research Methods* (Sage 2006).

Before these theoretical perspectives are discussed, the chapter first details the nature of the research methods employed, including a discussion of the materials used, the ethical considerations of the work, and the limitations of the research herein.

Material Used

The initial stage of research required a comprehensive descriptive account of the women sentenced to death in post-Independence Ireland. As no previous descriptive overview of this cohort existed, this stage entailed sourcing the relevant information using materials in the National Archives of Ireland (hereinafter 'NAI') and within newspaper archives. This information was then compiled as a database which included key descriptive information such as name, offence details, date of trial and verdict. This stage also entailed extensive archival research to track the outcome for each death-sentenced woman; this was relevant especially for women who had their sentence of death commuted, which formed the majority of the sample. Once this database had been created, a more in-depth, qualitative means of enquiry could commence which involved the sourcing and close reading of the archival materials on each of the death-sentenced women.

The materials used were those documentary sources which could provide information on women sentenced to death in Ireland; the gate-keepers within this manner of archival research are archivists and librarians. The documentary sources included official government documents as well as press reporting of the cases. The bulk of sources were officially generated government documents, the majority of which were stored in the NAI. These sources included the 'Death Books', these consisted of two ledgers, one stored in the NAI, and one at the on-site museum collection of Mountjoy Prison in Dublin. These ledgers recorded information on entry and exit from Mountjoy Prison, where all condemned persons were imprisoned, as well as information such as date of trial and Trial Judge.

In the NAI, the court records from the Dublin Commission, and the Central Criminal Court for the post-Independence period were consulted. These provided information on the trial proceedings, including, for example, lists of exhibits and witnesses, depositions and other materials. For those cases in which there was an appeal, the Court of Criminal Appeal files were consulted; these files often provided full transcripts of the trial. Further information on each of the cases was gleaned from the files kept by the relevant government

departments. The Department of An Taoiseach archive was consulted in the NAI and more recent files from this Department were viewed under supervision on-site at the Department of An Taoiseach.[6] The individual Department of Justice files on the death-sentenced women were also consulted in the NAI, following the granting of special permission from the Department of Justice. These files provided information on the cases of women who had their sentence of death commuted. These two archives offered significant material such as the confidential views of the Trial Judge, the memorandum on each case circulated by the Department of Justice following conviction, Garda Reports on the women, as well as petitions from the death-sentenced women and letters from members of the public.

The records maintained by the Dublin Diocesan Archives (DDA) were also consulted; this archive collected the papers of the Archdiocese of Dublin, and provided contextual information regarding the use of religious-run institutions within the criminal justice system as sites of semi-penal confinement for women.

Press reporting on the cases of each woman was also examined. This involved the extensive use of online databases which provided access to Irish newspaper titles. Online database searches were useful also in the initial compilation of the database of women sentenced to death.[7] Press reporting provided another means of 'reading' the cases of women sentenced to death. The newspaper reporting on many of the trials was comprehensive, and large sections of court testimony were reproduced, especially in headline trials; this has therefore provided an alternative means of interpreting the trials. Newspaper reporting also provided a glimpse of wider public reactions to the capital cases of women as well as providing a cue for public debate in how stories were framed. This framing of events by the press was evident in the shared narratives observed between the newspaper reporting and persons who wrote letters to the government.

The press represented a crucial medium of the twentieth-century, and was invariably intertwined with the dominant ideologies, reproducing culturally accepted norms and maps of behaviour. Relying too completely on press reporting, however, can present pitfalls. Scott warns that the political ideology of the owners, editors, as well as the administrative

[6] The Taoiseach is Ireland's premier, akin to the British Prime Minister.
[7] The digital databases of most relevance were 'Irish newspaper archive', the largest online database of Irish newspaper titles, and the *Irish Times*, an archive of this single title. British newspaper databases were also consulted, such as those of the *Guardian*, *Observer*, and *The Times*. The microfilm collections of the National Library of Ireland and Limerick City Library were also consulted.

routines of news-making itself, present various distortions.[8] However, the use of discourse analysis means that in this context press reporting becomes particularly illuminating as evidence of dominant hegemonic discourses.[9]

In addition to the official, and the press discourse on death-sentenced women, the thesis presents public discourse on the case studies, as well as the women's own voices. However, both of these claims must be interrogated as they stand suspect. Public discourse was drawn and understood from the extant letters sent by members of the public which were preserved within the archives. These letters were almost entirely pleas for clemency. As such, they represent one facet of discourse, and are far from capturing the multitudinous public reactions which such cases provoked.[10] Public reactions oppositional to those of leniency, in contrast, were occasionally evident within Garda Reports on the women, or in newspaper commentary which recorded the reactions from within courtrooms. The voices of the death-sentenced women, too, provide perplexing questions of agency and authenticity. These voices are gleaned from statements made to Gardaí, from testimony given in court, and in letters and petitions written while in prison. The fallacy that these are a true 'bottom-up' means of analysis is evident when one considers the rigid templates within which all these documents were produced. The voices of the women were inevitably bent towards official expectations and they likely therefore confined their concerns and thoughts to matters of official relevance.

Ethical Considerations

The historical and archival nature of the research herein meant that ethical considerations were concerned with issues of representation and identification.

Issues of representation concern the burden on the researcher to construct representations which are grounded in the archival material and which can be defended. The issue of identification relates to the potential harms associated with writing about women whose cases occurred during the twentieth-century, some within living memory. For example, the question of whether the full names of the subject women should be used was considered.

[8] John Scott, *A Matter of Record: Documentary Sources in Social Research* (Polity 1990).
[9] ibid.
[10] John Carter Wood, *The Most Remarkable Women in England: Poison, Celebrity and the Trials of Beatrice Pace* (Manchester University Press 2012); Lizzie Seal, *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory* (Routledge 2014).

Previous research of a similar bent has included names;[11] further, there is an inherent feminist argument that this research represents a process of rehabilitation and recovery, and involves a reinstatement of these women into our cultural history, something which necessitated the use of their names.

Identification also includes the possibility that family members of the women and the victims may access the research and that the research itself could cause distress. Barry Godfrey argues that historical criminology must deal with issues relating to the publication of the lives of deceased persons, both in relation to their own reputations and with relevance to the families still living.[12] In an age of easily accessible information and internet search engines, the impact of research may spread beyond the traditional academic community. Lizzie Seal recounts how she was contacted by four descendants of the subject women in her research, all of whom had become aware of her work through internet sources.[13] Regarding identification, the undertaking not to disclose identifying information which concerned living persons helps guide an approach which is sensitive to this issue.[14]

The question of anonymity also arose regarding letters from members of the public on the individual cases.[15] These letters are freely available to anyone who wishes to consult the files; however at the time the letters were sent, such alternative uses would likely not have been an operating concern. Consideration of this question ultimately turned on the choice of some letter writers to remain anonymous, while others included names and addresses. This, in tandem with the distance of three decades since the final case in the sample, motivated the decision to include the names of letter writers where available.

An exploration of women sentenced to death in post-Independence Ireland concerns women who were convicted of murder; this means that the archival material deals with

[11] Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000); Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010).
[12] Barry Godfrey, 'Historical and Archival Research Methods', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012).
[13] Lizzie Seal (2012) 'Emotion and Allegiance in Researching Four Mid-20th-Century Cases of Women Accused of Murder', *Qualitative Research*, 12(6) 686-701.
[14] As mentioned above, various archival files held by the Department of An Taoiseach and the Department of Justice both required such undertaking before access could be granted.
[15] Research of a similar nature which uses letters sent on individual criminal trials demonstrates that various approaches have been adopted. See for example, John Carter Wood (2009) '"Those Who Have Had Trouble Can Sympathise With You": Press Writing, Reader Responses and a Murder Trial in Interwar Britain', *Journal of Social History*, 43(2), 439-462 and Lizzie Seal (2014) 'Imagined Communities and the Death Penalty in Britain, 1930-65', *British Journal of Criminology*, 54(5), 908-927.

often difficult subject areas, rendering the research materials artefacts of personal devastation. This accords with the view that criminological research 'rests on human suffering'.[16] Even at a remove of decades, Seal remarks 'There is a strong ethical justification for acknowledging that research into homicide is emotive'.[17]

The lauded goal of objectivity has precluded many criminological researchers from openly writing about the emotions involved in research,[18] while the solitary nature of archival research does not necessarily lend itself well to reflexivity.[19] However, the feminist nature of the research herein necessarily means that reflexivity should be of paramount importance, and refutes the view that this would somehow render the work less 'objective'.[20] Mary Bosworth contends that we must widen our understanding of acceptable methodology to include a concern with emotions and greater reflexivity; she calls this a challenge to criminology, arguing that we should 'vanquish certainty with uncertainty'.[21]

Limitations

As with all research of an historical nature, the fear that some essential documents have been overlooked or destroyed is paramount. The contingency of research which relies on archival sources is the degree to which these archives are 'complete'.[22] In the research herein, gaps in the archival documentation have been identified in relation to two specific areas. The first of these concerns the experience of women within religious-run institutions. While some documents within the NAI, particularly within Department of Justice files, indicate confinement in these locations and provide some information, the

[16] Mary Bosworth (2001) 'The Past as a Foreign Country? Some Methodological Implications for Doing Historical Criminology', *British Journal of Criminology*, 41(3), 431-442, at 438.
[17] Lizzie Seal (2012) 'Emotion and Allegiance in Researching Four Mid-20th-Century Cases of Women Accused of Murder', *Qualitative Research*, 12(6), 686-701, at 689.
[18] Alison Liebling and Betsy Stanko (2001) 'Allegiance and Ambivalence: Some Dilemmas in Researching Disorder and Violence', *British Journal of Criminology*, 41(3), 421-430.
[19] Lizzie Seal (2012) 'Emotion and Allegiance in Researching Four Mid-20th-Century Cases of Women Accused of Murder', *Qualitative Research*, 12(6), 686-701.
[20] Mary Bosworth (2001) 'The Past as a Foreign Country? Some Methodological Implications for Doing Historical Criminology', *British Journal of Criminology*, 41(3), 431-442.
[21] ibid at 439.
[22] For example, see how the discovery of previously unavailable archival materials altered Ballinger's interpretation of the case of Louie Calvert, executed in England in 1926. Anette Ballinger, '*Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000); Anette Ballinger, 'Feminist Research, State Power and Executed Women: The Case of Louie Calvert', in Stephen Farrall, Mike Hough, Shadd Maruna and Richard Sparks, eds, *Escape Routes: Contemporary Perspectives on Life after Punishment* (Routledge/Cavendish 2011).

archives held by the religious congregations and orders that operated these institutions have generally not been opened to researchers.[23] The research herein has therefore drawn on the available archives to present as complete a picture as possible. The second gap in archival material relates to the final case in the sample, which was tried in the Special Criminal Court in 1976.[24] The characterisation of this murder as politically subversive and the relative proximity in time to the present-day, ensure sensitivities of subject-matter which mean that, in this particular case, the available archives were substantially different from the archival materials in the other 24 cases.[25]

Much also depends on the awareness of the sources that are available. For example, in the present case, the existence of individual Department of Justice files which provided significant detail on the post-commutation lives of those 21 women who were reprieved. This archive was immensely valuable, yet the researcher's access to these files demonstrated the perennial concern that archival research is contingent, and relies on both the integrity of the archive itself, and the researcher's awareness of the archival materials.

Discourse Analysis

Discourse analysis was the methodological approach used herein with regard to the documents uncovered. The research sought to explore how the death-sentenced women were discursively produced, and how this meaning was established in ways which were historically, socially and culturally contingent. Considering that both historical and feminist methodologies problematise the nature of knowledge, discourse analysis was

[23] These archives were recently opened to research being conducted as part of an official governmental inquiry into the State involvement with Magdalen laundries, which represented one type of religious-run institution. Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013).

[24] The Special Criminal Court was a non-jury court consisting of three judges, which heard cases of a subversive nature. The Court had a lengthy history in the Irish criminal justice system, and provision had been made for such special courts in the Constitution at Article 38.3 which stated that they could be used when 'the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order.' The Special Criminal Court had been re-established in the early 1970s in response to the political violence spilling over from 'the Troubles' in Northern Ireland. Its continued use ensures it is a controversial feature of the justice system. Fergal Francis Davis, *The History and Development of the Special Criminal Court, 1922-2005* (Four Courts Press 2007).

[25] This case offered a rich archive of documents from the Department of Foreign Affairs as the case achieved an international profile. The archives therefore focus on the *public reactions* to the trial, and present a plethora of letters and petitions from members of the public, nationally and internationally. However, the archives relating to the internal governmental consideration of the case are absent; for example, there are no official documents from the Department of Justice such as have been presented in the other cases. Correspondence with the Department of Justice on this point proved fruitless.

viewed as particularly appropriate as it seeks to expose the contingent nature of knowledge.

While the concept of discourse is usually credited to Michel Foucault, the common usage of the term has now expanded beyond his initial definition.[26] Foucault understood discourse to mean 'positivities', the surface of discourse, but the approach taken herein also explores 'the less, obvious, nuanced and implicit meanings for the subtle and complex renderings of ideological assumptions and power relations in everyday society'.[27] However, the relevance of Foucault's work persists in his questioning of the traditional assumptions of historical enquiry. Rather than using documents as a window through which to 'read' history, Foucault argued that documents were themselves historically significant, and could themselves become 'monuments'.[28] Foucault articulated the notion that discourse creates and evolves an object as it attempts to describe and delimit it.[29] As Harry Potter terms it, discourse is at work both in constructing and being constructed.[30] This recognition of the importance of discourse, despite myriad competing interpretations of what this term actually means, ensures that discourse analysis has become one of the predominant tools of analysis of the past few decades.[31]

Discourse analysis seeks to expose the positivistic myth of knowable 'truths', arguing instead that what is perceived as a 'truth' is merely that which is justifiable within the dominant discourse.[32] It turns on the 'deconstruction of coherence' which represented the prioritisation of certain privileged 'truths' over marginalised alternatives, for example the privileging of certain voices in the criminal justice system and the silencing of offenders.[33]

---

[26] R Keith Sawyer (2002) 'A Discourse on Discourse: An Archaeological History of an Intellectual Concept', *Cultural Studies*, 16(3), 433-456.
[27] Michelle M Lazar, 'Politicizing Gender in Discourse: Feminist Critical Discourse Analysis as a Political Perspective and Praxis', in Michelle M Lazar, ed, *Feminist Critical Discourse Analysis: Gender, Power and Ideology in Discourse* (Palgrave Macmillan 2007) at 13.
[28] Michel Foucault, *The Archaeology of Knowledge* (Tavistock 1972).
[29] ibid.
[30] Jonathan Potter, 'Discourse Analysis', in Melissa Hardy and Alan Bryman, eds, *Handbook of Data Analysis* (Sage 2004).
[31] Michelle M Lazar, 'Politicizing Gender in Discourse: Feminist Critical Discourse Analysis as a Political Perspective and Praxis', in Michelle M Lazar, ed, *Feminist Critical Discourse Analysis: Gender, Power and Ideology in Discourse* (Palgrave Macmillan 2007).
[32] Roger Sapsford, 'Discourse Research', in Roger Sapsford and Victor Jupp, eds, *Data Collection and Analysis* (Sage/Open University 2006).
[33] Anne Worrall, 'Discourse Analysis', in Eugene McLaughlin and John Muncie, eds, *The Sage Handbook of Criminology* (Sage 2005) at 132. See also Lorraine Code's discussion of the politics of testimony in 'Feminist Epistemology and the Politics of Knowledge: Questions of Marginality', in Mary Evans, Clare

On this theme, Pat Carlen has highlighted that while other participants in a courtroom present 'evidence', the police invariably present 'facts'.[34] Anne Worrall also used this approach in her work on women before the Magistrates' Courts to unpack the professional discourses on offending women and to view the operation of power within the courtroom.[35] This use of discourse analysis is further enriched when we consider that individuals in such situations can subvert hegemonic discourse or rebel against it,[36] providing their own alternative stories, an apt process for consideration in analysis of criminal trials.[37] This view of discourse as an extension of an ideology (for example the extension of hegemonic State power in the case of the apparatus of a criminal trial) sees a multiplicity of discourses, or competing narratives, existing simultaneously but being afforded differential legitimacy.[38]

Discourse analysis starts from a premise that discourse is situated and action-oriented, it is not abstract text, but rather emerges from contingent situations and is geared towards achieving something. Issues central to using discourse analysis therefore include, contextualising the author, their authority, the intended audience and desired outcome.[39]

Discourse analysis is also 'concerned with the way versions are constructed and made (to seem) objective and factual, or conversely, the way (apparently) factual versions are undermined as partial, distorted or interested'.[40] This further emphasises the importance of studying the discourses which shape criminal trials and which set the terms of conversation in the cases of death-sentenced women.

Discourse analysis has also become a potent tool in exploring how forms of oppression can be legitimised,[41] and how in the privileging of some voices over others, we can perceive a

---

Hemmings, Marsha Henry, Hazel Johnstone, Sumi Madhok, Ania Plomien and Sadie Wearing, eds, *The Sage Handbook of Feminist Theory* (Sage 2014).

[34] Pat Carlen, *Magistrates' Justice* (Martin Robertson 1976).

[35] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990).

[36] See for example Geraldine Horan (2011) 'Discourses of Gender and Nationalism in Early Twentieth-Century Germany and Ireland: An Analysis of Four Nationalist Women's Texts', *Patterns of Prejudice*, 45(5), 469-497.

[37] Roger Sapsford, 'Discourse Research', in Roger Sapsford and Victor Jupp, eds, *Data Collection and Analysis* (Sage/Open University 2006).

[38] ibid.

[39] Anne Worrall, 'Discourse Analysis', in Eugene McLaughlin and John Muncie, eds, *The Sage Handbook of Criminology* (Sage 2005).

[40] Jonathan Potter, 'Discourse Analysis', in Melissa Hardy and Alan Bryman, eds, *Handbook of Data Analysis* (Sage 2004) at 611.

[41] ibid.

'power gradient' at work.[42] Unsurprisingly therefore, discourse analysis has been adopted by many feminist researchers, the coincidence of emancipatory politics underpinning both approaches creating a rich partnership. However, the silence of poststructuralist writers, like Foucault, on the issue of gender, created some unease for feminist writers. The positioning of women as subjects, and the work of feminist academia, has gone far in redressing this.[43] The thesis herein therefore draws particularly on discourse analysis informed by feminist epistemology as its methodological approach.[44] This approach marries a critique of power relations with an understanding that these power relations are gendered. Further, this approach recognises the constitutive power of language in reinforcing and perpetuating gendered subjectivities.[45] Discourse analysis can add the analytical sophistication of an informed theoretical methodological approach to existing feminist theorising on power relations, providing an astute lens on how power and ideology work through discourse to create a gendered, hierarchical social order.[46]

Historical Criminology

Bosworth has argued that historical research fits awkwardly on both the qualitative and quantitative side of criminological methodology.[47] The question of objectivity in evidence, the 'golden fleece' of research, is particularly suspect when documents emanate from the past; there is 'a nexus between methodology, epistemology and ontology'[48] which the researcher must confront in tackling questions of interpretation and the origin of sources.

By way of example, because the archives used herein will often be legal in nature, the questions posed are those framed by the legal system itself. The documents relied on in this approach to research were typically compiled for different purposes and may therefore present an intriguing prospect for the criminologist who seeks to use them for radically

[42] Roger Sapsford, 'Discourse Research', in Roger Sapsford and Victor Jupp, eds, *Data Collection and Analysis* (Sage/Open University 2006).
[43] Barry Godfrey, 'Historical and Archival Research Methods', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012).
[44] See, for example, Michelle M Lazar (2007) 'Feminist Critical Discourse Analysis: Articulating a Feminist Discourse Praxis', *Critical Discourse Studies*, 4(2), 141-164.
[45] Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990/2000).
[46] Michelle M Lazar, 'Politicizing Gender in Discourse: Feminist Critical Discourse Analysis as a Political Perspective and Praxis', in Michelle M Lazar, ed, *Feminist Critical Discourse Analysis: Gender, Power and Ideology in Discourse* (Palgrave Macmillan 2007).
[47] Mary Bosworth (2001) '"The Past as a Foreign Country?" Some Methodological Implications of Doing Historical Criminology', *British Journal of Criminology*, 41(3), 431-442.
[48] ibid at 439.

different ends.[49] This means that 'Extracting evidence of the behavior and ideas of nonelite subjects from legal records is thus a difficult task'.[50] This bias, when knowledge is framed in elite structures, is a persistent difficulty when seeking to understand society 'from below' which causes a researcher to 'read against the grain'.[51]

However, the research herein seeks an understanding of the dominant discourses surrounding the cases of women sentenced to death, and these privileged statements will therefore form necessary components of analysis. Indeed, Godfrey has argued that applying discourse analysis to historical enquiries into crime is the single most ground-breaking conceptual development to occur within the field.[52] Historical criminology is not simply 'doing descriptive history' and the revolutionary nature of discourse analysis lies in its ability to offer an analysis of archival documents which will expose more than a basic narrative history, demonstrating how knowledges are reproduced and exposing dominant ideologies.[53]

The question of *what* was recorded for posterity, and of shifting recording patterns and interests also mean a lack of consistency may be evident across the decades.[54] John Scott has noted that documents were produced in accordance with the needs and practices of the State, and are not neutral records compiled by an ahistorical entity.[55] For example, he details how the debate about the death penalty prompted the collection of criminal statistics in Britain. Such contextual information reminds the researcher that statistics were compiled towards a purpose, and that they were inevitably products of administrative routines and situated decisions.[56]

Researchers of the past must also face interrogation as to the purpose of their work. Bosworth has defended the field of historical criminology in two ways; the need to

[49] ibid.
[50] Stephen Robertson (2005) '"What's Law Got to do with It?" Legal Records and Sexual Histories', *Journal of the History of Sexuality*, 14(1/2), 161-185, at 162.
[51] ibid.
[52] Barry Godfrey, 'Historical and Archival Research Methods', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012).
[53] John Muncie, 'Discourse Analysis', in Victor Jupp, ed, *The Sage Dictionary of Social Research Methods* (Sage 2006).
[54] Barry Godfrey, 'Historical and Archival Research Methods', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012).
[55] John Scott, *A Matter of Record: Documentary Sources in Social Research* (Polity 1990).
[56] ibid.

document what happened, and the subsequent necessity of providing a critique.[57] The research herein aims to fulfil these obligations. First, it retrieves, through careful compilation, a detailed and comprehensive account of women sentenced to death, an undertaking not previously attempted. Secondly through in-depth analysis, it challenges the conceptions of gender and justice by reference to these specific case-studies.

This use of historical methodology to challenge existing orthodoxy is evident in Bosworth's century-spanning study of women's institutional detention in Paris which sought to uncover continuities between the past and present regarding the forms and purposes of women's imprisonment. The findings disputed the myths of traditional history which suggested that prison was an innovation of the late-eighteenth to mid-nineteenth-century.[58] Bosworth identified three issues of relevance to the historical criminologist,[59] as 'essentially problems of interpretation, evidence and emotion'.[60] Historical accounts of punishment must provide insights from those persons subject to it, possess an awareness that some perspectives will be particularly invisible, particularly those of women and children, and remember that capital punishment even at a remove of decades or centuries can be an emotive subject.[61]

Women's History

Women as a distinct social group have been absent from the bulk of traditional history. Alongside the emergence of feminist approaches throughout academia, the idea of 'women's history' began to flourish in a project which sought to 'restore women to history and to restore our history to women'.[62] This endeavour was galvanised by Joan W Scott's call for the use of gender as a category of historical analysis.[63] Scott wrote that the impact

[57] Mary Bosworth (2001) '"The Past as a Foreign Country?" Some Methodological Implications of Doing Historical Criminology', *British Journal of Criminology*, 41(3), 431-442.
[58] Mary Bosworth (2000) 'Confining Femininity: A History of Gender, Power and Imprisonment', *Theoretical Criminology*, 4(3), 265-284. For traditional revisionist explanations of the birth of the prison see, Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Penguin 1979) and Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (Macmillan 1978).
[59] Bosworth drawing on Peter Linebaugh, *The London Hanged: Crime and Civil Society in the 18th Century* (Penguin 1991) at 431-432.
[60] Mary Bosworth (2001) '"The Past as a Foreign Country?" Some Methodological Implications of Doing Historical Criminology', *British Journal of Criminology*, 41(3), 431-442, at 432.
[61] ibid.
[62] Joan Kelly-Gadol, 'The Social Relations of the Sexes: Methodological Implications of Women's History', in Sandra Harding, ed, *Feminism and Methodology: Social Science Issues* (Indiana University Press/Open University Press 1987) at 15.
[63] Joan W Scott (1986) 'Gender: A Useful Category of Historical Analysis', *The American Historical Review*, 91(5), 1053-1075.

of gender-awareness in academia could be revolutionary; women's history could not only provide the missing perspective of women it would also provide an alternative perspective on *all* history. Despite the existence of a considerable body of women's history scholarship it had tended to be dismissed by the traditional academy, restricted to an appreciation of family life and assumed to be unsuitable in history 'proper'. Just as a class-based analysis incorporated more than descriptions of the working-class; Scott also proposed a more expansive use of gender as a concept, to explore how it pervaded and constructed society rather than simply as short-hand for women.[64]

The attempt to recover women's history is hampered by the subjugated position of women. Bosworth found one particular challenge in her research was the dearth of archival materials, compounded by the illiteracy of many of the subject women. Women's history necessarily concentrates on what Foucault termed, 'subjugated knowledges', the voices of the less privileged, such as those of women.[65] Logistically, this presents an obstacle for the researcher, as it renders the subject less knowable, 'the historical record is in most western countries male orientated'.[66] In this vein also we should remember that the voices of the poor were particularly mute.[67]

In Ireland, Margaret MacCurtain and Mary O'Dowd wrote that the focus on the political and revolutionary past excluded all but a few notable women.[68] Irish historiography seemed to actively exclude women by its focus on political history, meaning the actions of elected politicians.[69] When women's history did emerge, it continued the political focus, albeit with the addition of research on the role women played in nationalism and suffragism.[70] Within Irish women's history, biographies of key figures abound,[71] but Joan

---

[64] ibid.
[65] Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977* (Colin Gordon ed/tr, Harvester Press 1980).
[66] Margaret MacCurtain and Mary O'Dowd, *Women in Early Modern Ireland* (Edinburgh University Press 1991) at 3.
[67] Mary Bosworth (2001) '"The Past as a Foreign Country?" Some Methodological Implications of Doing Historical Criminology', *British Journal of Criminology*, 41(3), 431-442.
[68] Margaret MacCurtain and Mary O'Dowd, *Women in Early Modern Ireland* (Edinburgh University Press 1991).
[69] Mary McAuliffe, 'Irish Histories: Gender, Women and Sexualities', in Katherine O'Donnell and Mary McAuliffe, eds, *Palgrave Advances in Irish History* (Palgrave 2009).
[70] See, for example, Rosemary Cullen Owens, *Smashing Times: A History of the Irish Women's Suffrage Movement* (Attic Press 1984) and Cliona Murphy, *The Women's Suffrage Movement and Irish Society in the Early Twentieth Century* (Harvester Wheatsheaf 1989) on the fight for the vote. On women's participation in the nationalist struggle, see, for example, Margaret Ward, *UnManageable Revolutionaries: Women and Irish Nationalism* (Pluto Press 1995), Sinéad McCoole, *No Ordinary Women: Irish Female Activists in the*

Hoff has warned that appropriating notable women for biographies can be a form of compensatory history which employs the 'great man' approach of traditional history, leaving no space for the lives of ordinary women.[72] Maria Luddy argued that it should not appear that a hierarchy of worthy women is being created to mirror the hierarchy of worthy men; rather it is a fundamental process of reclamation for women who were prominent in the late nineteenth- and early-twentieth-centuries, but have since been forgotten within traditional historical accounts of the period.[73]

The interdisciplinary nature of the thesis herein is evident in the range of literature drawn on to contextualise the research. The research has been greatly enriched by the work of Irish historians who engaged with gendered perspectives on the criminal justice system. This includes scholarship on the philanthropic works of women, for example in the work of ladies prison visiting committees and prison gate refuges.[74] Scholarship on the hidden recesses of morality and sexuality has also been integral to the analysis herein.[75] Discrete areas of research into women and crime also exist; the offence of infanticide has also been subject to more extensive research than many other crimes, reflecting increasing interest in the areas of sexuality and morality.[76] Mary McAuliffe calls for class and race to be further incorporated into research on women's history in Ireland, and for greater analysis of the urban/rural and north/south divides within Irish society.[77] In addition to presenting the first analysis of women sentenced to death in post-Independence Ireland, the research herein will also attempt to contribute to developing ideas of class in Irish society in the post-

---

Revolutionary Years (O'Brien Press 2004), and Ann Matthews, *Renegades: Irish Republican Women, 1900-1922* (Mercier Press 2000).

[71] See, for example, Charlotte H Fallon, *Soul of Fire: A Biography of Mary MacSwiney* (Mercier 1986); Anne Haverty, *Constance Markievicz: An Independent Life* (Pandora 1988); Margaret Ward, *Hanna Sheehy-Skeffington: A Life* (Attic Press 1997).

[72] Joan Hoff, 'The Impact and Implications of Women's History', in Maryann Gialanella Valiulis and Mary O'Dowd, eds, *Women and Irish History: Essays in Honour of Margaret MacCurtain* (Wolfhound Press/Irish American Book Company 1997).

[73] Maria Luddy, *Women in Ireland, 1800-1918: A Documentary History* (Cork University Press 1995).

[74] Maria Luddy, *Philanthropy in Nineteenth-Century Ireland* (Cambridge University Press 1995).

[75] Dympna McLoughlin, 'Women and Sexuality in Nineteenth-Century Ireland', in Alan Hayes and Diane Urquhart, eds, *The Irish Women's History Reader* (Routledge 1994); Maria Luddy, *Prostitution and Irish Society, 1800-1940* (Cambridge University Press 2007); Diarmuid Ferriter, *Occasions of Sin* (Profile 2009); Tom Inglis and Carol MacKeogh (2012) 'The Double Bind: Women, Honour and Sexuality in Contemporary Ireland', *Media, Culture and Society* 34(1), 68-82.

[76] Elaine Farrell, '*A Most Diabolical Deed': Infanticide and Irish Society, 1850-1900* (Manchester University Press 2013); Clíona Rattigan, *What Else Could I Do?: Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).

[77] Mary McAuliffe, 'Irish Histories: Gender, Women and Sexualities', in Katherine O'Donnell and Mary McAuliffe, eds, *Palgrave Advances in Irish History* (Palgrave 2009).

Independence period, as well as on the chasm between urban and rural society evident during that time.

Feminist Methodology and Feminist Criminology

Feminist methodology offers a challenge to the received wisdom regarding epistemology, or the nature of knowledge.[78] Feminism as a political and theoretical movement also made its presence felt in many academic disciplines, such as criminology.[79] The following sections aim to document the feminist approaches to both methodology and criminology; while both have produced significant contributions, such as the concept of intersectionality and the sub-discipline of victimology, both feminist methodology and feminist criminology remain marginalised.[80]

Feminist Methodology

Feminist methodology is characterised by a pervasive concern with questions of epistemology.[81] Methodology entails 'a theory and analysis of how research does or should proceed',[82] while epistemology refers to a theory of knowledge, for example an awareness that traditional research privileged certain knowers – white, male and middle-class – which rendered the supposedly gender neutral subject of science as masculine. Objectivity was therefore a myth, and knowledge was always a product of its creators.[83] In consequence, feminists argued that 'what we took to be humanly inclusive problematics, concepts, theories, objective methodologies, and transcendental truths are in fact far less than that'.[84] Sandra Harding adds that feminist research involves studying up, rather than studying

[78] Sandra Harding, ed, *Feminism and Methodology* (Indiana University Press/Open University Press 1987).
[79] Gail Mason and Julie Stubbs, 'Feminist Approaches to Criminological Research', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012).
[80] On this see, Kathleen Daly and Meda Chesney-Lind, (1988) 'Feminism and Criminology', *Justice Quarterly*, 5(4), 497-538; Gail Mason and Julie Stubbs, 'Feminist Approaches to Criminological Research', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012); Lorraine Code, 'Feminist Epistemology and the Politics of Knowledge: Questions of Marginality', in Mary Evans, Clare Hemmings, Marsha Henry, Hazel Johnstone, Sumi Madhok, Ania Plomien and Sadie Wearing, eds, *The Sage Handbook of Feminist Theory* (Sage 2014). This marginalisation has been noted within criminology by Ngaire Naffine who used something as elementary as the layout of criminological textbooks to demonstrate the sequestering of feminist thought and research on women and crime in the section 'Gender and Crime', which implicitly assumed that criminology was male, and gender was female, Ngaire Naffine, *Feminism and Criminology* (Polity 1997).
[81] Gail Mason and Julie Stubbs, 'Feminist Approaches to Criminological Research', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012).
[82] Sandra Harding, ed, *Feminism and Methodology* (Indiana University Press/Open University Press 1987) at 3.
[83] ibid.
[84] Sandra Harding, *The Science Question in Feminism* (Open University Press 1986) at 15.

down, and a focus on gendered power relations.[85] Within feminist criminology, as with other critical criminologies,[86] reflexivity has been particularly important.[87] This is because such criminologies were deeply critical of earlier methodological paradigms which were oblivious to the inherent biases of the researcher, treating him/her as the invisible mover. Alternatively, the importance of reflexivity comes from 'the well-established feminist precept that knowledge is always situated',[88] and of a feminist preoccupation with power dynamics.[89]

While feminist research can avail of all research methods, it has become linked in the academic imagination to small-scale qualitative studies, to the coding of themes and inductive processes rather than the testing of hypotheses and vast amounts of quantitative data.[90] These approaches are often derided as 'soft' and peripheral to 'real' research.[91] Harding noted how within the binaries of Science v Nature, Mind v Body, Objectivity v Subjectivity, the former are all male while the latter are female and are perceived as hindrances to be overcome: 'Neither God nor tradition is privileged with the same credibility as scientific rationality in modern culture'.[92] Harding formulated a schema of feminist approaches to methodology: empirical, standpoint and postmodern feminism.[93]

Feminist Empiricism

Empirical feminism sought to produce data about women, to add to the body of knowledge which already existed, but which had tended to exclude women, or represent them in stereotypical ways. Feminist empiricists therefore attempted to enlarge the aperture through which the world was viewed.[94] Specifically, empirical feminism, 'sought to develop a method of evidence-gathering that would be cleansed of androcentrism'.[95]

---

[85] Sandra Harding, ed, *Feminism and Methodology* (Indiana University Press/Open University Press 1987).
[86] Gail Mason and Julie Stubbs, 'Feminist Approaches to Criminological Research', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012).
[87] Sandra Harding, ed, *Feminism and Methodology* (Indiana University Press/Open University Press 1987).
[88] Lizzie Seal (2012) 'Emotion and Allegiance in Researching Four Mid-20th-Century Cases of Women Accused of Murder', *Qualitative Research*, 12(6) 686-701, at 697.
[89] Gail Mason and Julie Stubbs, 'Feminist Approaches to Criminological Research', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012).
[90] ibid.
[91] Ngaire Naffine, *Feminism and Criminology* (Polity 1997).
[92] Sandra Harding, *The Science Question in Feminism* (Open University Press 1986) at 16.
[93] ibid.
[94] ibid.
[95] Lorraine Code, 'Feminist Epistemology and the Politics of Knowledge: Questions of Marginality', in Mary Evans, Clare Hemmings, Marsha Henry, Hazel Johnstone, Sumi Madhok, Ania Plomien and Sadie Wearing, eds, *The Sage Handbook of Feminist Theory* (Sage 2014) at 11.

Rather than tearing down the entire scientific edifice, empirical feminists argued that by using these same standards *better*, they could better reflect social reality.[96]

Feminist empiricists working within criminology reinstated the previously unseen women within the criminal justice system. The feminist critique of criminology argued that women were either absent or peripheral to traditional criminology, and that when present they were viewed in stereotypical ways. The task of feminist criminology was therefore twofold, to address the question of why there had been such an absence, and to challenge the stereotypes that did exist.[97] Significant amounts of work on women as defendants,[98] and as prisoners,[99] emerged to address the lacuna. Many feminist criminologists argued that before women could be included, the myths of traditional criminology had to be addressed.[100] This myth-busting remains one of feminist criminology's dominant preoccupations.[101] The official reliance on these myths is evident throughout this thesis, which will demonstrate how the construction of condemned women in post-Independence Ireland drew heavily on the acceptance of unquestioned stereotypes which pervaded the early theories.

However, the addition of women to research does not make it feminist. Studies which are about women are not automatically feminist by virtue of this fact.[102] For example, the 'liberation hypothesis' proposed by Freda Adler[103] presented views which alarmed many feminists.[104] However, as Lorraine Code writes, 'empiricism's commitment to revealing the concealed effects of gender-specificity in knowledge production cannot be gainsaid'.[105] Feminist empiricism remains essential therefore, for example in relation to the current

[96] Sandra Harding, ed, *Feminism and Methodology* (Indiana University Press/Open University Press 1987).
[97] Frances Heidensohn, *Women and Crime* (2nd ed, Macmillan 1996).
[98] Susan Edwards, *Women on Trial: A Study of the Female Suspect, Defendant and Offender in the Criminal Law and Criminal Justice System* (Manchester University Press 1984).
[99] Pat Carlen, *Women's Imprisonment: A Study in Social Control* (Routledge and Kegan Paul 1983).
[100] Dorie Klein, (1973) 'The Etiology of Female Crime', in Freda Adler and Rita J Simon, eds, *The Criminology of Deviant Women* (Houghton Mifflin 1979); Carol Smart, *Women, Crime and Criminology: A Feminist Critique* (Routledge and Kegan Paul 1977).
[101] Frances Heidensohn, *Women and Crime* (2nd ed, Macmillan 1996).
[102] Gail Mason and Julie Stubbs, 'Feminist Approaches to Criminological Research', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012).
[103] *Sisters in Crime: The Rise of the New Female Criminal* (McGraw Hill 1976).
[104] Kathleen Daly and Meda Chesney-Lind (1988) 'Feminism and Criminology', *Justice Quarterly*, 5, 497.
[105] Lorraine Code, 'Feminist Epistemology and the Politics of Knowledge: Questions of Marginality', in Mary Evans, Clare Hemmings, Marsha Henry, Hazel Johnstone, Sumi Madhok, Ania Plomien and Sadie Wearing, eds, *The Sage Handbook of Feminist Theory* (Sage 2014) at 12.

thesis which aims to present for the first time an account of women sentenced to death in post-Independence Ireland.

Standpoint Feminism

Standpoint feminism asserted that as knowledge was grounded in experience, female experience provided a more unblemished view of social reality. The views of the dominant group were considered perverted, while the 'subjugated knowledges' could provide greater clarity.[106] This was expressed by bell hooks, writing about her experience of living in the marginalised black community of a small Kentucky town:

> Living as we did – on the edge – we developed a particular way of seeing reality. We looked both from the outside in and from the inside out. We focused our attention on the center as well as on the margin. We understood both.[107]

Standpoint feminists asserted that gender was not a natural concept, and that gendered power relations were one of the key organising principles for society.[108] They claimed that in the binary of masculinity and femininity, the traits of masculinity were prioritised which meant that 'knowledge' was essentially male knowledge.[109] Standpoint feminism argued that by prioritising the lived experience of women, traditional wisdom could be replaced with an understanding of the world which cleaved more closely to things as they are.

The effects of this approach are evident in Carlen's 1985 work on female offenders which handed over authority to her female subjects through their inclusion in authorship, Carlen made female offenders quite literally the authors of their own stories.[110] Within criminology, standpoint feminism was crucial during the 1970s and 1980s as it added to the empiricist agenda by giving a voice to the women who had been victims of sexual or domestic violence. Hearing first-hand accounts from women who had experienced victimisation was part of the consciousness-raising feminism, and standpoint feminism

[106] Sandra Harding, *The Science Question in Feminism* (Open University Press 1986).
[107] bell hooks, *Feminist Theory from Margin to Center* (South End Press 1984) Preface.
[108] Kathleen Daly and Meda Chesney-Lind (1988) 'Feminism and Criminology', *Justice Quarterly*, 5(4), 497-538.
[109] ibid.
[110] Pat Carlen, Diana Christina et al, *Criminal Women: Autobiographical Accounts* (Polity, in association with Basil Blackwell 1985).

emerged from this grass-roots activism with the aim of helping women.[111] Carol Smart has argued that it is only really in this area that standpoint feminism has had any impact on criminology.[112] Even as traditional criminology departed from 'objective' empiricism and attempted to side with the standpoint of the offender, it still excluded women.[113]

However, criticisms were soon levelled at the standpoint approach by critics who argued that it was naïve to claim that women were better able to conceive reality. Standpoint feminism was also criticised for its essentialist ideal of 'Woman' which suggested that there was merely one 'standpoint' which aimed to speak with one voice 'for women'.[114] Notwithstanding the critiques of standpoint feminism, this thesis embodies principles derived from the approach; for example, the inclusion of the lost voices of condemned women and the importance of this inclusion to the goals of the thesis, reflect the standpoint feminist project. The thesis therefore attempts to undertake Maureen Cain's task of 'deconstructing' official discourses and 'reconstructing' alternative histories.[115]

Postmodern Feminism

Postmodernism attempted to rethink notions of epistemology; just as there was no universal 'Man', so there was no universal 'Woman'.[116] Gendered experience varied across ethnicities, class, and cultures.[117] Postmodernism, with its focus on fragmented identities,[118] deconstructed notions of coherent self and universal truth.[119]

---

[111] Carol Smart, 'Feminist Approaches to Criminology or Postmodern Woman Meets Atavistic Man', in Loraine Gelsthorpe and Allison Morris, eds, *Feminist Perspectives in Criminology* (Open University Press 1990).
[112] ibid.
[113] Frances Heidensohn, *Women and Crime* (2nd ed, Macmillan 1996) at 146. Feminist criminologists argued that while the nature of the epistemology shifted, criminology remained a male endeavour. The exclusion of crimes like rape and domestic violence from studies rendered women unseen. See, Carol Smart, *Women, Crime and Criminology: A Feminist Critique* (Routledge and Kegan Paul 1977); Ngaire Naffine, *Feminism and Criminology* (Polity 1997).
[114] Ngaire Naffine, *Feminism and Criminology* (Polity 1997).
[115] Maureen Cain (1990) 'Towards Transgression: New Directions in Feminist Criminology', *International Journal of the Sociology of Law*, 18(1), 1-18.
[116] Sandra Harding, ed, *Feminism and Methodology* (Indiana University Press/Open University Press 1987).
[117] Sandra Harding, *The Science Question in Feminism* (Open University Press 1986); Sandra Harding, ed, *Feminism and Methodology* (Indiana University Press/Open University Press 1987).
[118] Sandra Harding, ed, *Feminism and Methodology* (Indiana University Press/Open University Press 1987).
[119] Kathleen Daly and Meda Chesney-Lind (1988) 'Feminism and Criminology', *Justice Quarterly*, 5(4), 497-538.

Feminist criminology was attacked as a false façade.[120] Indeed, Smart attacked what she saw as the essential modernist edifice of criminology as a discipline unable or unwilling to encompass the complexities of postmodern thought. For Smart, feminist thought had transcended the modernist framework of criminology.[121] The work of Worrall, however, is one example of how postmodernism, feminism and criminology can peacefully co-exist; Worrall's study of women before the Magistrates' Courts is an application of Foucault's power/knowledge framework which seeks to question the nature and operation of the professional knowledges of those persons who diagnose, categorise and represent women who have committed crimes.[122]

While empirical and standpoint feminism were attempting to create a more perfect view of reality, postmodernism was sceptical of the ability of enquiry to distil any such thing as 'truth' at all.[123] Postmodern feminists claimed that the presence of so many 'subjugated knowledges' rendered any claim to a universal 'story' moot, and that simply replacing a male story with a female story did not make it any truer.[124] This was particularly the case when the 'female' in question was exposed as white, middle-class, Western, and exclusionary to other voices.[125] Postmodern feminist criminology was informed by the voices of women of colour. Understandings of race and class were introduced by the work of leading black feminists such as bell hooks and Kimberlé Crenshaw.[126] To this new breadth of voices which critiqued the gender essentialism within feminism, the term intersectionality was given, this is a 'shorthand term that reflects the complexity of experience and relations of power especially, but not limited to, the intersection of gender,

[120] Gail Mason and Julie Stubbs, 'Feminist Approaches to Criminological Research', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012).
[121] Carol Smart, 'Feminist Approaches to Criminology or Postmodern Woman Meets Atavistic Man', in Loraine Gelsthorpe and Allison Morris, eds, *Feminist Perspectives in Criminology* (1990, Open University Press).
[122] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990).
[123] Sandra Harding, *The Science Question in Feminism* (Open University Press 1986).
[124] Sandra Harding, ed, *Feminism and Methodology* (Indiana University Press/Open University Press 1987) at 188.
[125] Thérèse Murphy, 'Bursting Binary Bubbles', in John Morison and Christine Bell, eds, *Tall Stories? Reading Law and Literature* (Dartmouth 1996).
[126] bell hooks, *Feminist Theory from Margin to Center* (South End Press 1984); Kimberlé Crenshaw (1989) 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics', *The University of Chicago Legal Forum,* 139-167.

race (and/or ethnicity) and class.'[127] hooks identified racism and classism in much early feminist thinking; hooks argued that feminism could not effectively represent the 'whole' of women because it spoke from the 'centre' with the voice of white, middle-class women while ignoring the subjectivities of black, working-class, oppressed women.

Foucault has been key in the development of postmodernism, the contention 'that "reality", subjectivity and "truth" are constructed and produced through discourse, power and knowledge',[128] adheres to Foucault's power/knowledge framework. Foucault argued that no one perspective could provide a truer account of reality; power is not an instrumental thing which is used by one easily definable group to oppress another, rather it is diffused throughout society, informing the knowledges of all, and constituting our ideas of self and place. While Foucault's own work was silent on gender, he did write that 'subjugated knowledges' should be revived and rescued,[129] which suggested feminist methodology as a complimentary approach.

Deconstructionism offered further opportunities for engagement with postmodernist theory. The work of Judith Butler has been seminal in the deconstruction of gender categories.[130] Deconstructionism focuses on language, its limitations as well as its power to change reality through its role in the construction of meaning. Deconstructionism posits that language is relational and referential; it is not a self-contained and static phenomenon which applies labels to pre-existing things.[131] Therefore it explores binaries, and feminism exploits this tool to unpack meanings of 'man' and 'woman'. Deconstructionism sees language as a system of differences and therefore 'man' is only understood in relation to 'woman'. Therefore, feminists argue that we can achieve change by deconstructionism, by showing how the 'superior' term of man is only made possible by the 'inferior' term of woman, which should combat an assumption of the binary hierarchy as somehow natural.[132]

---

[127] Gail Mason and Julie Stubbs, 'Feminist Approaches to Criminological Research', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012) at 492.
[128] ibid at 488.
[129] Michel Foucault, *Power/Knowledge: Selected Interviews and other writings, 1972-1977* (Colin Gordon ed/tr, Harvester Press 1980).
[130] Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990/2000).
[131] Jacques Derrida, *Positions* (Alan Bass tr, Continuum 2004).
[132] Ngaire Naffine, *Feminism and Criminology* (Polity 1997).

A postmodern feminist analysis of the law employed concepts of deconstructionism to expose how socially constructed gender roles are reinforced and perpetuated. Mary Joe Frug argued that the law terrorised, maternalised and sexualised female bodies:

> By directly or indirectly penalizing conduct which does not conform to a particular set of sexual behaviors, legal rules promote a model of female sexuality; this model is characterized by monogamy, heterosexuality, and passivity.[133]

Butler has argued that the law created naturalised subjects, presenting these as finished products and making the *how* invisible; once these subjects had been produced they could be subject to regulatory discourses.[134] Within the current thesis, the production of maternal bodies is particularly relevant. Frug writes that the law produces the seemingly 'natural' maternal status of women's bodies by 'Rules that prohibit, restrict, or hinder' access to abortion and contraceptives. Through such laws, Frug contends that women are 'conscripted' for maternity 'against their will.'[135]

Indeed, the conflation of the idea of 'woman' with notions of the body and of sexuality was identified by earlier thinkers such as Simone de Beauvoir.[136] While man had been understood as the essence of reason and objectivity, woman represented wildness, nature, and therefore, sex. De Beauvoir wrote that, 'thus she is called "the sex", by which is meant that she appears essentially to the male as a sexual being. For him, she is sex – absolute sex, no less.'[137] This has been identified within criminology by Ngaire Naffine who argued that men as subjects are never understood as gendered and therefore they appeared most often with no understanding of how masculinities might shape their world. Naffine writes that the loss of this perspective is devastating considering that gender of the offender presents as the most reliable characteristic in crime figures.[138]

---

[133] Mary Joe Frug (1992) 'A Postmodern Feminist Legal Manifesto (An Unfinished Draft)', *Harvard Law Review*, 105(5), 1045-1075, at 1062.
[134] Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990/2000).
[135] Mary Joe Frug (1992) 'A Postmodern Feminist Legal Manifesto (An Unfinished Draft)', *Harvard Law Review*, 105(5), 1045-1075, at 1059-60.
[136] Simone de Beauvoir, *The Second Sex* (1949/1997 Vintage), see also discussion of the notion of women as 'sex' and 'body' in Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990/2000).
[137] Simone de Beauvoir, *The Second Sex* (1949/1997 Vintage) at 16.
[138] Ngaire Naffine, *Feminism and Criminology* (Polity 1997).

The approach of postmodernism is evident in this thesis in the recognition that women perform gendered scripts, and are made legible through their adherence or deviation from such normative roles. The awareness of the discursive construction of the condemned women through their multiple indicators of identity, for example through their class, situates this research within a postmodern vein also.

Conclusion

This chapter has grounded the research herein within the theoretical perspectives which informed the methodology, namely discourse analysis, historical criminology, and feminist methodology and criminology. These approaches all share a concern with epistemology and the nature of knowledge, this concern runs through the research herein as a means of interrogating the discursive production of death-sentenced women.

These methodological approaches present innovative ways of understanding the cohort of women sentenced to death in Ireland post-Independence. Cases of death-sentenced women have been absent from understandings of capital punishment in Ireland, which has traditionally been understood from an official top-down perspective, with men as default and women as afterthought. Using methodological approaches which undermine this notion of top-down enquiry and grounding analysis in an understanding of gendered power relations can expose alternatives truths. The thesis will attempt to provide a gendered, historically situated analysis of the cases of all women sentenced to death in Ireland post-Independence for the first time. Mary Bosworth and Emma Kaufman argue that incorporation of gender is essential in critical accounts of punishment, despite the almost total absence of gender as an analytic category in the works of the most oft-cited theorists.[139] The research herein seeks to present an alternative and equally legitimate perspective on capital punishment in post-Independence Ireland through the inclusion, for the first time, of an analysis of the cases of women sentenced to death. This gendered interpretation of the death penalty in Ireland reimagines women and capital punishment in post-Independence Ireland.

[139] Mary Bosworth and Emma Kaufman, 'Gender and Punishment', in Jonathan Simon and Richard Sparks, eds, *The Sage Handbook of Punishment and Society* (Sage 2013).

Chapter One

Women Who Kill

Introduction

This chapter presents an overview of the theoretical perspectives and criminal justice responses to women who kill. A review of this literature contextualises understanding of the death-sentenced women within the current thesis and grounds findings within broader discourses on women who kill.

The chapter concentrates on broad themes which are of particular relevance to the thesis herein, particularly those of chivalry, double deviance, pathology, infanticide, and informal social control. The concept of chivalry relates to the perceived leniency that women receive in the criminal justice system as a result of their gender. For some writers, this chivalry is merely an off-shoot of a paternalistic approach to women which countenances more lenient treatment because of an assumption that women are 'different' and essentially 'less than' men. The flip-side of this is represented by the idea of 'double deviance' which suggests that women are judged more harshly because of the contravention of gender norms. The chapter then presents a summary of how offending women have been pathologised, particularly in relation to the female reproductive system. Within this, the pathologisation of women who kill abusive male partners is also investigated. Next, infanticide is examined and the legal developments leading to the creation of the specific offence of infanticide are presented. Informal social control overviews the historical and contemporary tendency to view formal punishment as inappropriate for women; responses to offending women are often situated in rehabilitation to the domestic, rather than in recourse to imprisonment.

Women Who Kill: Public Notoriety and Academic Ambivalence

Women commit less crime than men, and attain a 'statistically élite' status when they do.[1] Crimes of violence are particularly atypical, and women kill with less frequency than men. When women do kill, their homicides are viewed as different from those of men. They are more likely to kill persons from within their intimate family, a finding which has held true

[1] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990) at 2.

historically and more contemporaneously.[2] Fundamentally, the research demonstrates that 'women's homicides are "different"'.[3]

The rarity of female-perpetrated killings has ensured particular interest when women do kill. Women who kill often attract a heightened level of public and media attention. There are a plethora of cases which epitomise society's interest in women who use extreme violence.[4] These women present 'compelling images of crime and deviance,'[5] and their cases provided tantalising raw material for writers.

Another consequence of women's smaller share of crime is that the phenomenon has not been researched or theorised as comprehensively as male crime. For many years the two most commonly known things about women and crime were that they committed much less of it, and that no one wrote anything about it.[6] This theoretical stagnation meant that the early theories achieved disproportionate influence.

Throughout discussion of the themes within this chapter therefore, the reliance on outmoded theories of female criminality is highlighted. However, the influence of feminist enquiry in academia, outlined in the previous chapter, has finally led to the theorising of women who kill from more innovative perspectives;[7] the chapter considers the typologies and theoretical frameworks proposed by such academics to explain the responses to women who kill.

---

[2] JM Beattie, *Crime and the Courts in England, 1660-1800* (Clarendon Press 1986); Enda Dooley, *Homicide in Ireland: 1972-1991* (Stationery Office 1995); Enda Dooley, *Homicide in Ireland: 1992-1996* (Stationery Office 2001).

[3] Ann Jones, *Women Who Kill* (Feminist Press 2009) at 23.

[4] Robert O'Sullivan, *Goodbye Lizzie Borden* (Chatto and Windus 1975); Catherine O'Sullivan (2000) 'Has the Real Monster been Let off the Hook?' *Hibernian Law Journal*, 0(2), 226-255; Jessie Ramey (2004) 'The Bloody Blonde and the Marble Woman: Gender and Power in the Case of Ruth Snyder', *Journal of Social History*, 37(3), 625-650; Lizzie Seal (2009) 'Issues of Gender and Class in the *Mirror* Newspaper's Campaign for the Release of Edith Chubb', *Crime Media Culture*, 5(1), 57-78; Lizzie Seal (2011) 'Ruth Ellis and the Public Contestation of the Death Penalty', *The Howard Journal*, 50(5), 492-504; John Carter Wood, *The Most Remarkable Woman in England: Poison, Celebrity and the Trials of Beatrice Pace* (Manchester University Press 2012).

[5] Frances Heidensohn, *Women and Crime* (2nd ed, Palgrave Macmillan 1996) at 86.

[6] Ngaire Naffine, *Feminism and Criminology* (Polity 1997).

[7] See for example Belinda Morrissey, *When Women Kill: Questions of Agency and Subjectivity* (Routledge 2003); Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave 2010).

Chivalry

Chivalry is the theory that women benefit from leniency within the criminal justice system because of their gender. Otto Pollak's work on chivalry has had significant lasting impact;[8] Pollak wrote that the operation of chivalry masked the true levels of female crime and that women avoided punishment through lack of reporting, prosecution and conviction. When women were convicted, Pollak argued that they were treated more leniently than men. This leniency was the result of a male-dominated legal system which sought to protect the weaker sex from the consequences of their actions.

Chivalry also informs feminist theories of the criminal justice treatment of women. Anne Worrall, for example, has identified a 'gender contract' through which women become the recipients of leniency in exchange for their adherence to traditional female roles. This leniency is not an absolute, however, and Worrall cautions that not all women can, or wish to, qualify for leniency under such terms.[9] Ann Jones, too, refutes a general theory of chivalry, arguing that women often face more severe penalties when convicted of typically masculine crimes.[10] Other writers argue that it is the refusal to contextualise women's violence that makes the criminal justice response appear lenient. Instead, the reduction of these crimes to individual-level pathology obscures the presence of structural factors.[11] Chivalry is problematic because the perceived leniency is often facilitated by the removal of agency from women, in a manner which neutralises women and constructs them according to narratives of victimisation, femininity and pathology.

Feminist academics therefore problematise the use of chivalry, interpreting it instead as a manifestation of paternalism. Elizabeth F Moulds argued that focusing on the benefits of chivalry meant ignoring the negative consequences of a gendered hierarchy founded on assumptions of women as inferior, 'If the gentle treatment women are said to enjoy is based on this political inferiority, we should be aware of the high price paid for the so-

[8] Otto Pollak, *The Criminality of Women* (AS Barnes 1961).
[9] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990). Worrall also noted that legal professionals continued to express ideas about the inherent deceitfulness of women, also espoused in the work of Otto Pollak, suggesting that these stereotypes of femininity have strong cultural staying power.
[10] Ann Jones, *Women Who Kill* (Feminist Press 2009).
[11] Susan Edwards, *Women on Trial: A Study of the Female Suspect, Defendant and Offender in the Criminal Justice System* (Manchester University Press 1984); Anette Ballinger (2007) 'Masculinity in the Dock: Legal Responses to Male Violence and Female Retaliation in England and Wales, 1900-1965', *Social and Legal Studies*, 16(4), 459-481.

called benefits of chivalry.'[12] Instead, Moulds wrote that the benefits derived from chivalry are made possible by a legal system that reinforced the subjugated position of women. Echoing the arguments of Frug,[13] Moulds said that the law made women's inferior position appear natural.

Also problematic is the differential extension of chivalry to women according to their adherence to appropriate femininity, related to the interplay of factors such as class, race, ethnicity and sexuality. The narratives presented during the criminal trial incorporate concepts of merit, used to mitigate verdict or sentence. Merit in this context refers to questions of morality and normative gender roles.[14]

Chivalry is therefore related to factors such as the maternalisation of women.[15] The archetypal 'good woman' embraces the template of motherhood, and holds women as the nuclei of the family.[16] Official assessments of how well women perform this role of motherhood are often pivotal in how they are sentenced.[17]

Susan Edwards contends that any universal statement of chivalry is overly simplistic because it fails to consider how it is related to woman's ability to satisfactorily perform her appropriate gender.[18] Writing on the case of Laura Lynn,[19] Anette Ballinger notes how her demeanour in the dock aided her construction as sympathetic:

> In acting in accordance with dominant and conventional expectations of female behaviour – distraught, pathetic, harmless, ruled by her emotions while also maintaining the idealized feminine traits of frailty, delicacy and helplessness,

[12] Elizabeth F Moulds (1978) 'Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System', *Western Political Quarterly*, 31(3), 416-430, at 417.
[13] Mary Joe Frug (1992) 'A Postmodern Feminist Legal Manifesto (An Unfinished Draft)', *Harvard Law Review*, 105(5), 1045-1075.
[14] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990).
[15] Mary Joe Frug (1992) 'A Postmodern Feminist Legal Manifesto (An Unfinished Draft)', *Harvard Law Review*, 105(5), 1045-1075.
[16] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990).
[17] Pat Carlen, *Women's Imprisonment: A Study in Social Control* (Routledge and Kegan Paul 1983); Susan Edwards, *Women on Trial: A Study of the Female Suspect, Defendant and Offender in the Criminal Justice System* (Manchester University Press 1984).
[18] Susan Edwards, *Women on Trial: A Study of the Female Suspect, Defendant and Offender in the Criminal Justice System* (Manchester University Press 1984).
[19] Convicted of the murder of her abusive husband in England in 1925.

> Laura activated the discourses involved in the construction of emphasized femininity.[20]

This notion of performativity in the construction of gender has been proposed by Judith Butler.[21] We do not exist as an 'autonomous pre-discursive self',[22] and simultaneously gender is not an innate element of sex. Rather, through an 'authorised' script, we repeatedly perform our gender. These gender identities are binary and exist as male/female, masculine/feminine. When a body's performance of gender is unsatisfactory, they become unintelligible. Using this theory of gender as performance, we can see how elements of femininity, such as demeanour and dress, go towards the successful performance of femininity, render a woman intelligible, and contribute to the extension of a more lenient criminal justice response. This concept of performance assumes an almost literal meaning in discussions of demeanour during criminal proceedings, as outlined by Ballinger,[23] in which an 'audience' assembles to decide on the identity of the accused as either guilty or innocent.

Double Deviance

The flip-side of chivalry is the concept of 'double deviance'. Women who kill can be considered doubly deviant; they have contravened both the law and their gender expectations. Heidensohn has noted that this rarity accords offending women a peculiar status, 'Women defendants therefore seem stranger, and thus less comprehensible than men: they offend both society's behavioural rules… and also against the more fundamental norms which govern sex-role behaviour.'[24]

There is disagreement about the extent to which violent women received harsher sentences than men historically.[25] However, an argument which refutes the theory of double deviance

[20] Anette Ballinger (2007) 'Masculinity in the Dock: Legal Responses to Male Violence and Female Retaliation in England and Wales, 1900-1965', *Social and Legal Studies*, 16(4), 459-481, at 468.
[21] Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990/2000).
[22] Anna Carline (2005) 'Zoora Shah: "An Unusual Woman"', *Social and Legal Studies*, 14(2), 215-238, at 218.
[23] Anette Ballinger (2007) 'Masculinity in the Dock: Legal Responses to Male Violence and Female Retaliation in England and Wales, 1900-1965', *Social and Legal Studies*, 16(4), 459-481.
[24] Frances Heidensohn, *Women and Crime* (2nd ed, Palgrave Macmillan 1996) at 47.
[25] For example, Lucia Zedner claimed that violent women were given harsher penalties than violent men in the nineteenth-century, however Godfrey et al have disputed this 'double deviance' theory, arguing instead that women received lesser sentences when comparing like for like. They add that the policy was to control 'dangerous masculinities' and that female crime was viewed as less threatening. See Lucia Zedner, *Women, Crime and Custody in Victorian England* (Oxford University Press 1991); Barry S Godfrey, Stephen Farrall,

omits reference to how, as a consequence of the differential application of chivalry mentioned above, *some* women receive a harsher criminal justice response because they fail to attain normative gender standards. Nevertheless, it should be borne in mind that double deviance is not an absolute, and that the interplay of a variety of factors shapes the dominant narrative on individual cases of women who kill.[26]

However, the rarity of women who kill, and the chasm this creates between gender role expectation and reality, means that women who kill can become abject, as they possess both the power to give life, and the destructive force to take it away.[27] The rarity of the phenomenon, according to Belinda Morrissey can cause society to 'project' onto the women the characteristics of monster or myth. By monsterising or mythologising women who kill, her unnatural deeds can be reconstructed as more palatable. Once monsterised, she is not human, and therefore we are spared the anxiety of comprehending how a woman could act in such a way.[28] The demonisation of women who kill therefore relates to the unnaturalness of female violence, 'male violence is seen to exist on a continuum, female deviance is polarised: madonna/whore, the gentler sex or the more deadly species; Snow White/the Wicked Queen.'[29]

One mythic female trope has been that of the witch, which has long been associated with the demonisation of deviant women.[30] Lizzie Seal identifies this as a recurrent 'shadow discourse' which persists in discussions of violent women.[31] Historically, the figure of the poisoner has also loomed large in many conceptions of women who kill and has illustrated the archetypal 'evil woman' trope. Poisoning was considered the weapon of choice for

---

Susanne Karstedt (2005) 'Explaining Gendered Sentencing Patterns for Violent Men and Women in the Late-Victorian and Edwardian Period', *British Journal of Criminology*, 45(5), 696-720.

[26] Anette Ballinger (2007) 'Masculinity in the Dock: Legal Responses to Male Violence and Female Retaliation in England and Wales, 1900-1965', *Social and Legal Studies*, 16(4), 459-481; John Carter Wood, *The Most Remarkable Woman in England: Poison, Celebrity and the Trials of Beatrice Pace* (Manchester University Press 2012).

[27] Julia Kristeva's concept of the 'abject' has been used to theorise women who kill. The abject invokes notions of transgression and horror through the blurring of acceptable boundaries. Julia Kristeva, *Powers of Horror: An Essay on Abjection* (Columbia University Press 1982).

[28] Belinda Morrissey, *When Women Kill: Questions of Agency and Subjectivity* (Routledge 2003).

[29] Bronwyn Naylor (1990) 'Media Images of Women Who Kill', *Legal Services Bulletin*, 15(1), 4-8.

[30] 'Malleus Maleficarum', or 'Hammer of the Witches', was written in 1489 by two Inquisitors, see Camille Naish, *Death Comes to the Maiden: Sex and Execution, 1431-1933* (Routledge 1991). Malleus Maleficarum was cited by Otto Pollak as a criminological source when he came to write *The Criminality of Women* (AS Barnes 1961). Morrissey places the figure of the witch at the crossroads of monsterisation and mythification, Belinda Morrissey, *When Women Kill: Questions of Agency and Subjectivity* (Routledge 2003).

[31] Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010).

women, due to their relative physical weakness and (according to some early theorists such as Pollak) more devious minds.[32] Fear of poisoning reached fever-pitch in the Victorian era which saw a number of high-profile cases incite the fear of the murderess.[33] The traditional role of women in food preparation and as nurses of the vulnerable, saw the female poisoner held apart 'as particularly loathsome and odious'.[34]

The early theories on female criminality, emerging from the late-nineteenth- and into the twentieth-centuries, often reserved greater opprobrium for offending women. For example, Cesare Lombroso and William Ferrero, whose work popularised the idea of the female criminal as masculine and degenerate. The presence of certain features, marks of atavism, led them to conclude that the 'Born Female Criminal', although rare, was more depraved than her male equivalent.[35] This biological positivism squarely identified female criminality as evidence of unnatural masculinity in women. Pollak too claimed that female criminals were more cunning and manipulative than male criminals.[36] These theories condemned offending women as worse than offending men, either because of their presumed masculinity, or through the stereotype of devious femininity.

One result of the perceived 'double deviance' of women who kill is that they are often judged for their failure to embody ideal womanhood to a satisfactory standard. Just as chivalry rewards adherence to this ideal, so double deviance punishes deviation. Women who kill are constructed in relation to the conventional narrative of the 'good woman'; beyond these conventions, women are at risk of demonisation. As the good woman is sexually passive, nurturing and gentle, a good mother and a good wife, the presence of 'aggravating factors' counter to these can amplify the evil woman discourse. One 'aggravating factor' is the exhibition of a dangerous sexuality, which compounds the inexplicability of women who kill.[37] High-profile twentieth-century cases of women who

[32] Otto Pollak, *The Criminality of Women* (AS Barnes 1961). John Carter Wood has disputed the claim that women who kill using poison are considered more reprehensible than men who kill using the same method, John Carter Wood, *The Most Remarkable Woman in England: Poison, Celebrity and the Trials of Beatrice Pace* (Manchester University Press 2012).
[33] Ann Jones, *Women Who Kill* (Feminist Press 2009).
[34] Ballinger writes that women found guilty of murder by poison were never reprieved. Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000) at 28.
[35] Cesare Lombroso and William Ferrero, *The Female Offender* (P Owen 1895/1959).
[36] Otto Pollak, *The Criminality of Women* (AS Barnes 1961).
[37] Belinda Morrissey, *When Women Kill: Questions of Agency and Subjectivity* (Routledge 2003); Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010).

kill have left a cultural legacy of 'evil women'. The notoriety of Myra Hindley and Rose West particularly, demonstrates the construction of women who kill as mythic monsters. Myra Hindley's participation in what is 'still commonly deemed the most shocking and outrageous crime of the 20th century in Britain', made her a cultural icon and a totem of evil.[38] Hindley's lasting cultural significance is as the archetype of feminine evil.[39] In the case of Rose West also, an evidential gap was 'filled with an attack on Rose West's character and femininity'.[40] This denial of femininity and evidence of her unnatural sexuality facilitated the construction of West as a 'bad woman' and 'as almost mythically evil'.[41] Because murder is predominantly the preserve of men, women who kill 'trouble the masculine/feminine gender binary by transgressing its boundaries'.[42] The confusion of boundaries of sex, gender and sexuality can further compound the abjection of women who kill.

Pathology

In the literature on women who kill, one recurring theme is that of women and pathology. The link between women and pathology was reified in the early nineteenth-century,[43] coinciding with the gendering of reason as masculine:

> Everything that seems uniquely female becomes a challenge to the rational scientific intellect. Woman's body, its autonomous rhythms and generative possibilities, appears to the masculinist vision as a 'frontier', another part of the natural world to be explored and mined.[44]

[38] Claire Wardle (2007) 'Monsters and Angels: Visual Press Coverage of Child Murders in the USA and UK, 1930-2000', *Journalism*, 8(3), 263-284, at 273.
[39] Helen Birch, 'If Looks Could Kill: Myra Hindley and the Iconography of Evil', in Helen Birch, ed, *Moving Targets: Women, Murder and Representation* (Virago 1993).
[40] Jo Winter (2002) 'The Truth Will Out: The Role of Judicial Advocacy and Gender in Verdict Construction', *Social and Legal Studies*, 11(3), 343-367, at 353.
[41] Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010) at 40.
[42] ibid at 1.
[43] Although women began to outnumber men in the newly established network of asylums, Showalter notes that this was the end result of a self-fulfilling prophecy whereby assumptions about women's greater need translated into disproportionate capacity allocation for women. Elaine Showalter, *The Female Malady: Women, Madness and English Culture, 1830-1980* (Virago 1987).
[44] Barbara Ehrenreich and Deirdre English, *For Her Own Good: 150 Years of the Experts' Advice to Women* (Anchor Books 1989) at 19.

It became elemental that women represented madness and irrationality.[45] Women's inherent vulnerability chimed with dominant notions of an ideal womanhood that was delicate and frail.[46] As Barbara Ehrenreich and Deirdre English note, 'the sick woman was not that far off from the ideal woman anyway'.[47]

The idea of woman as inherently irrational and predisposed to madness facilitated the use of pathologised discourses when women defied gender roles, through the commission of an offence. Hilary Allen writes that there is a tendency to ascribe female offending behaviour to mental illness at a greater rate than male offending behaviour. This proposes a general assumption that at the moment of commission, female offenders were disengaged from rational thought.[48]

The association of women with madness inevitably drew on reasoning related to the female reproductive system as disease. Female biology was held to underlie a wide range of specifically female mental disorders.

> In the construction of femininity, the 'normal' female body and mind are perceived as being predisposed to malfunction. Menstruation, pregnancy, childbirth, and the menopause all result in 'hormonal imbalance' – a phrase which connotes that women may themselves be 'imbalanced' during those times.[49]

Menstruation, for example, was believed to cause temporary insanity in women.[50] Pollak too had linked menopause with women's increased irritability and offending.[51] The

[45] Elaine Showalter, *The Female Malady: Women, Madness and English Culture, 1830-1980* (Virago 1987).
[46] Barbara Ehrenreich and Deirdre English, *For Her Own Good: 150 Years of the Experts' Advice to Women* (Anchor Books 1989).
[47] ibid at 108.
[48] Hilary Allen, 'Rendering them Harmless: The Professional Portrayal of Women Charged with Serious Violent Crimes', in Kathleen Daly and Lisa Maher, eds, *Criminology at the Crossroad: Feminist Readings in Crime and Criminology* (Oxford University Press 1998).
[49] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990) at 63-64.
[50] Samantha Pegg (2009) 'Madness is a Woman: Constance Kent and Victorian Constructions of Female Insanity', *Liverpool Law Review*, 30(3), 207-223. Menstruation was considered a risk factor for insanity, and medical advice instructed women on the best way to delay menarche and prescribed diets which minimised blood flow, Elaine Showalter, *The Female Malady: Women, Madness and English Culture, 1830-1980* (Virago 1987).
[51] Otto Pollak, *The Criminality of Women* (AS Barnes 1961). Menopausal women invoked public opprobrium if they defied societal expectations of how they should behave, such women were derided especially if they expressed sexuality. This predisposition was considered disturbing in older women, and some underwent

specific diagnosis of hysteria was another which related specifically to women.[52] Pregnancy and childbirth particularly have been linked with insanity, initially in puerperal insanity and 'milk fever' in the 1800s, and more recently post-natal depression or psychosis. The link between childbirth and insanity was so strong that even after the introduction of the restrictive 1843 M'Naghten rules on insanity in the legal process, women who had committed crimes after giving birth were afforded wider definitions of insanity.[53] The tendency to link women's crime to the female reproductive system is not an historical oddity; the incorporation of Pre-Menstrual Tension (PMT) into the Diagnostic and Statistical Manual of Mental Disorders (IV), in 1994, cemented this link in the modern era.[54] Mary Donnelly notes that this incorporation confirms that the body, in law, remains a male body; female bodies remain aberrant and in need of diagnosis.[55]

The pathologisation of women has been linked with female sexuality as well as with female biology. Nineteenth-century thought often ascribed madness to rampant and uncontrollable female sexuality. Victorian diagnoses of 'moral insanity' coincided almost perfectly with a female sexuality that was considered deviant. This diagnosis surmised that sufferers were incapable of making morally 'appropriate' decisions.[56] This ensured that expressions of female sexuality, and contravention of passive sexuality, could ground pathologisation.[57] Later theories reinforced this association, for example, in the reduction

---

treatment which involved the removal of the labia, or the insertion of ice in the vagina, Elaine Showalter, *The Female Malady: Women, Madness and English Culture, 1830-1980* (Virago 1987).

[52] Barbara Ehrenreich and Deirdre English, *For Her Own Good: 150 Years of the Experts' Advice to Women* (Anchor Books 1989).

[53] Susan Edwards, *Women on Trial: A Study of the Female Suspect, Defendant and Offender in the Criminal Justice System* (Manchester University Press 1984).

[54] Jane M Ussher (2003) 'The Role of Premenstrual Disphoric Disorder in the Subjectification of Women', *Journal of Medical Humanities*, 24(1/2), 131.

[55] Mary Donnelly, 'Gender Differences and Criminal Law Defences', in Gerard Quinn, Attracta Ingram and Stephen Livingston, eds, *Justice and Legal Theory in Ireland* (Oak Tree Press 1995).

[56] Elaine Showalter, *The Female Malady: Women, Madness and English Culture, 1830-1980* (Virago 1987).

[57] Perhaps the most alarming indicator of the taboo that was female sexuality was the clitoridectomy pioneered to prevent women from masturbating, thought to be a precursor to insanity, Elaine Showalter, *The Female Malady: Women, Madness and English Culture, 1830-1980* (Virago 1987). Invasive and unnecessary medical procedures have been a recurring feature of medical responses to the female body. Throughout the twentieth-century, allegations of widespread and unnecessary hysterectomies seemed to echo this Victorian practice, see Barbara Ehrenreich and Deirdre English, *For Her Own Good: 150 Years of the Experts' Advice to Women* (Anchor Books 1989). Likewise, in Ireland, the practice of symphysiotomy also involved invasive medical procedures, ostensibly to aid childbirth, but at the expense of women's autonomy and health. Symphysiotomy was a practice which 'unhinged' the pelvis; sustained campaigning work by survivors and advocacy groups has led to the establishment of a State Symphysiotomy Payment Scheme with the mandate to compensate survivors for pain and suffering, see Ivana Bacik, *Kicking and Screaming: Dragging Ireland into the Twenty-First Century* (O'Brien Press 2004). Further, the ongoing issue of Female Genital Mutilation recalls these gendered surgical practices, see *Female Genital Mutilation: A Joint WHO/UNICEF/UNFPA Statement* (WHO 1997).

of women to sexuality in theories of psychoanalysis.[58] Dorie Klein has argued that this psychoanalytic influence further moulded normative views of femininity, arguing that 'Healthy women would now be seen as masochistic, passive and sexually indifferent. Criminal women would be seen as sexual misfits.'[59]

However, as with chivalry, explanations grounded in pathology are not applied equally to women; discourses of pathology are extended differentially to women based on factors such as class, race, ethnicity and sexuality. Worrall writes that many women are denied full status as mentally ill, and are instead constructed by sub-psychiatric discourses.[60] Historically, this process involves the privileging of certain mental disorders for more affluent, respectable women who were presumed to be more sensitive than working-class women.[61] Early theories of female criminality had depicted working-class women as hardy and resilient.[62] In contrast, mental disorder was viewed as an indicator of refinement in nineteenth-century England.[63] Ann Jones incorporates an analysis of race into this phenomenon also, asking 'Why is a black woman's larceny a white woman's kleptomania?'[64]

Women who kill abusive male partners have been particularly subject to discourses of pathology. These homicides have generated considerable academic, political and activist attention in recent years.[65] Historically, women who killed their husbands could be subject to more onerous punishments than men who killed their wives.[66] However, the beginnings of a more sympathetic response towards such women developed at the beginning of the

[58] Elaine Showalter, *The Female Malady: Women, Madness and English Culture, 1830-1980* (Virago 1987).
[59] Dorie Klein (1973) 'The Etiology of Female Crime', in Freda Adler and Rita J Simon, eds, *The Criminology of Deviant Women* (Houghton Miffin 1979) at 71.
[60] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990).
[61] Elaine Showalter, *The Female Malady: Women, Madness and English Culture, 1830-1980* (Virago 1987).
[62] Cesare Lombroso and William Ferrero, *The Female Offender* (P Owen 1895/1959).
[63] Elaine Showalter, *The Female Malady: Women, Madness and English Culture, 1830-1980* (Virago 1987).
[64] Ann Jones, *Women Who Kill* (Feminist Press 2009).
[65] Kate Fitz-Gibbon, *Homicide Law Reform: Gender and the Provocation Defence* (Palgrave Macmillan 2014).
[66] The offence of *petit treason* was defined as the murder of an ecclesiastical superior by an inferior, the murder of a master by a servant, or the murder of a husband by his wife. The designation of these murders as *petit treason* reflected their subversive and threatening nature. Shelley AM Gavigan (1989/1990) 'Petit Treason in Eighteenth Century England: Women's Inequality before the Law', *Canadian Journal of Women and the Law*, 3(2), 335-374.

twentieth-century; this sympathy was invoked in cases where the victim could be shown to be 'villainous'.[67]

This approach has developed with the aid of pathologised discourses of female behaviour, leading some feminist critics to question its usefulness. The increasing pathologisation of women who kill abusive partners is linked with the development of Battered Woman Syndrome (BWS), a diagnosis used to provide clinical explanations of such behaviour.[68] The reduction of women's violence to pathology and the case-by-case approach means that the endemic nature of male violence against women and children can be ignored.[69] Further, the legal system has struggled to accommodate cases of women who kill in this context; the narrow understanding of provocation did not encompass cases of this nature.[70] In contrast, the acceptance of diminished responsibility may indicate that 'battered women are likely to evoke a more favourable judicial response if they confine themselves to medical-type excuses rather than the partial justification of provocation.'[71]

---

[67] This was aided by developing notions of respectable masculinity. Ginger Frost (2004) '"She is but a woman": Kitty Byron and the English Edwardian Criminal Justice System', *Gender and History*, 16(3), 538-560; Anette Ballinger (2007) 'Masculinity in the Dock: Legal Responses to Male Violence and Female Retaliation in England and Wales, 1900-1965', *Social and Legal Studies*, 16(4), 459-481; John Carter Wood, *The Most Remarkable Woman in England: Poison, Celebrity and the Trials of Beatrice Pace* (Manchester University Press 2012).

[68] Rohit Sanghvi and Donald Nicolson (1993) 'Battered Women and Provocation: The Implications of R v Ahluwalia', *Criminal Law Review*, October, 728-738; Lenore EA Walker (2006) Battered Woman Syndrome, *Annals of the New York Academy of Sciences*, 1087(1) 142-157.

[69] Anette Ballinger (2007) 'Masculinity in the Dock: Legal Responses to Male Violence and Female Retaliation in England and Wales, 1900-1965', *Social and Legal Studies*, 16(4), 459-481.

[70] Prior to the Homicide Act 1957, provocation had been availed of by men, often men who killed in response to jealousy. The problematic nature of provocation was recently the subject of legislative reform in England and Wales in the Coroners and Justice Act 2009 which attempted to definitively remedy the failure of the defence to incorporate 'slow burn' reactions; the partial defence was renamed 'loss of self-control' and reconceptualised so that the loss no longer needed to be sudden. Kate Fitz-Gibbon, *Homicide Law Reform: Gender and the Provocation Defence* (Palgrave Macmillan 2014). In Ireland, there is no legislative underpinning for provocation, and the test is entirely subjective. The courts have demonstrated acceptance of cumulative provocation in cases of women who kill abusive male partners, and evidence of abuse has reduced the offence from murder to manslaughter, in these cases suspended sentences have been passed, see Anthony McGrath (2010) 'The Provocation Predicament', *Hibernian Law Journal*, 9(1), 26-38. The partial defence of diminished responsibility was introduced in Ireland in the Criminal Law (Insanity) Act 2006 after decades of unsuccessful attempts to insert the defence via judicial activism, see Louise Kennefick (2011) 'Diminished Responsibility in Ireland: Historical Reflections on the Doctrine and Present-day Analysis of the Law', *Northern Ireland Legal Quarterly*, 62(3), 269-290.

[71] Rohit Sanghvi and Donald Nicolson (1993) 'Battered Women and Provocation: The Implications of R v Ahluwalia', *Criminal Law Review*, October, 728-738, at 7. Sanghvi and Nicolson argue that although the English case of Kiranjit Ahluwalia was pivotal in the development of the law on provocation, the acceptance of diminished responsibility demonstrated the continuing pathologisation of women who kill their abusers. Kiranjit Ahluwalia, an Indian woman, travelled to England for an arranged marriage and began to suffer physical and sexual abuse just days after the ceremony. In 1989, after ten years of marriage, Kiranjit killed her husband by pouring petrol over him as he slept and setting it alight. The court found that delay was not an

Although pathology-based defences may offer individual women a more lenient criminal justice response, they perpetuate stereotypes of women as passive and irrational.[72] These defences also position women's actions within a medical, rather than a legal, discourse and have the unwelcome effect of focusing attention on the women's personal characteristics rather than on the abusive behaviour of the partner.[73]

While acknowledging the link between male violence as a precipitator of some female-perpetrated homicides, Morrissey remarks that these 'politically neutered victims' are then denied responsibility for their eventual actions in overcoming abusive behaviour.[74] The pathologisation of women who kill abusive partners entirely overlooks the rationality of such a response.[75] Many writers have commented that the irony of much feminist activism has been that while agitating for agency and full status, they have simultaneously propelled the sub-discipline of victimology and contributed towards a new pathology of violent women.[76]

The willingness with which women who kill are pathologised again suggests a paternalistic approach; this is particularly relevant in cases of women who kill abusive male partners. However, the readiness to neutralise female agency in order to offer legal protections has emerged as a more general finding of the research in this area. The construction of women as inferior was premised on their 'Othered' anatomy and reproductive functions, which rendered them a category more deserving of protection.

Infanticide

A majority of the women sentenced to death in the sample herein were capitally convicted for infanticide. This section explores the exceptional status of infanticide historically and the legal reforms which created infanticide as a separate offence in the twentieth-century. Infanticide has formed a significant area of study within the more general area of women

---

automatic barrier to a defence of provocation, but ultimately preferred the defence of diminished responsibility.

[72] Rohit Sanghvi and Donald Nicolson (1993) Battered Women and Provocation: The Implications of R v Ahluwalia, *Common Law Review*, 728.

[73] ibid.

[74] Belinda Morrissey, *When Women Kill: Questions of Agency and Subjectivity* (Routledge 2003) at 17.

[75] Bronwyn Naylor (1990) Media Images of Women Who Kill, *Legal Services Bulletin*, 15(1), 4-8.

[76] Belinda Morrissey, *When Women Kill: Questions of Agency and Subjectivity* (Routledge 2003).

who kill;[77] cases of women who kill their children represent the archetypal female murder.[78]

As with women who killed abusive male partners, women who kill their infants have the power to present an 'ideologically sound' example of the use of lethal violence by women.[79] The cultural significance of motherhood can be identified in the literature on chivalry and in the privileging of the maternal role; conversely, the power of the 'bad mother' trope can operationalise more severe responses to women who kill.[80]

> To be a 'woman' or a 'mother' carried with it certain social expectations: to want to have children; to love them immediately, dearly and always; to put their interests first at all times; to enjoy every aspect of childcare and domestic responsibilities; and to be ever smiling, ever cheerful, all perfect.[81]

It appears paradoxical then, that cases of women who kill their infants should provoke discourses of sympathy; however, legal reforms in this area have reconceptualised infanticide as a form of killing less heinous than murder.

The first English legislation dealing with infanticide dates from 1623. Although its stated object was the 'concealment of birth', the statute was in fact designed to target the infanticide of illegitimate infants. The legislation created a presumption of guilt for murder upon the discovery of the body of an illegitimate infant, which could only be rebutted by the production of a witness who would give evidence that the infant had been stillborn.[82] The specific aim of this legislation, which was directed at unmarried women only, suggested that pragmatic concerns about inheritance and illegitimacy were more pressing than the preservation of infant life per se. In this manner, the law targeted the supposed social ill of 'bastardy' through the punishment and control of unmarried women.[83] Thus,

---

[77] See for example, Emma Cunliffe, *Murder, Medicine and Motherhood* (Hart 2011).
[78] Allison Morris and Ania Wilczynski, 'Rocking the Cradle: Mothers Who Kill Their Children', in Helen Birch, ed, *Moving Targets: Women, Murder and Representation* (Virago 1993).
[79] Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010) at 3.
[80] Mary Welek Atwell, *Wretched Sisters: Examining Gender and Capital Punishment* (2nd ed, Peter Lang 2014).
[81] Allison Morris and Ania Wilczynski, 'Rocking the Cradle: Mothers Who Kill Their Children', in Helen Birch, ed, *Moving Targets: Women, Murder and Representation* (Virago 1993) at 198-199.
[82] Katherine O'Donovan (1984) 'The Medicalisation of Infanticide', *Criminal Law Review*, May, 259-264.
[83] Liena Gurevich (2010) 'Parental Child Murder and Child Abuse in Anglo-American Legal System', *Trauma, Violence and Abuse*, 11(1), 18-26.

responses to infanticide from the earliest times have been concerned with the sexual propriety of women and with the threat posed by illegitimacy.

The severity of the presumption of guilt in the 1623 law was ameliorated in Lord Ellenborough's Act of 1803, which saw infanticide trials placed on the same footing as other homicide trials. The 1803 Act also provided for an alternative conviction for the offence of concealment of birth.[84] However, infanticide remained an offence of murder and still carried a mandatory sentence of death.[85] Despite the formal legal construction of the offence however, juries were often reluctant to confer death sentences on such women,[86] and governments were unwilling to carry them out.[87] To mitigate the severity of the law, cases of suspected infanticide were often disposed of by way of lesser charges;[88] for example, concealment of birth was a misdemeanour under the Offences Against the Person Act 1861, and in cases in which there was no evidence of intention, manslaughter charges were often preferred.[89]

Infanticide was carved out as a discrete offence, one of manslaughter rather than murder, in the twentieth-century. The English Infanticide Act of 1922 created the new offence of infanticide, which was applicable only to women who killed their newborn infants; the legislation framed disturbance of the mind occasioned by childbirth as the rationale for differential treatment. In the subsequent Infanticide Act 1938, the law was reformed in two ways: the age of the infant was amended to 12 months, and the medicalisation of the women was extended through the inclusion of the term 'the effects of lactation'.[90]

In Ireland, the Infanticide Act 1949 followed suit, incorporating the same terminology as the English legislation of 1938.[91] The legislation allowed for an offence of infanticide where it could be shown that: 'her mind was disturbed by reason of her [the mother] not

[84] Katherine O'Donovan (1984) 'The Medicalisation of Infanticide', *Criminal Law Review*, May, 259-264.
[85] From 1861 it was governed under section 1 of the Offences Against the Person Act 1861 along with other murders.
[86] RW Malcolmson, 'Infanticide in the Eighteenth Century', in JS Cockburn, ed, *Crime in England 1550-1800* (Methuen 1977).
[87] Hilary Marland, 'Getting Away with Murder? Puerperal Insanity, Infanticide and the Defence Plea', in Mark Jackson, ed, *Infanticide*: *Historical Perspectives on Child Murder and Concealment, 1550-2000* (Ashgate 2002).
[88] Karen M Brennan (2013) '"A Fine Mixture of Pity and Justice": The Criminal Justice Response to Infanticide in Ireland, 1922-1949', *Law and History Review*, 31(4), 793-841; Karen M Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.
[89] Peter Charleton, *Offences Against the Person* (Round Hall 1992).
[90] Katherine O'Donovan (1984) 'The Medicalisation of Infanticide', *Criminal Law Review*, May, 259-264.
[91] Karen M Brennan (2013) '"A Fine Mixture of Pity and Justice": The Criminal Justice Response to Infanticide in Ireland, 1922-1949', *Law and History Review*, 31(4).

having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child'.[92]

Commentators have suggested that the Irish Infanticide Act was motivated by pragmatism rather than humanitarian concerns, and was intended to realign the law with practice as the existing capital status of infanticide had become something of an absurdity.[93]

Katherine O'Donovan has argued that the creation of infanticide as a separate offence in the twentieth-century created medicalised rationales for a leniency which had historically been premised on socio-economic factors. O'Donovan contended that 'medical theory provided a convenient reason for changing the law.'[94] In this interpretation, medicalisation was a Trojan horse though which leniency could be afforded to women. These discourses of pathology had been evident from the nineteenth-century, when judicial and executive reluctance to execute women capitally convicted of infanticide was premised on 'lay' understandings of pathology, which may have concealed recognition of structural factors such as poverty and illegitimacy.[95] However, the Infanticide Acts of 1922 and 1938 reified this medicalisation, and cemented the notion of individual-level pathology as motivation. Allison Morris and Ania Wilczynski cite the very fact of a separate offence of infanticide as evidence of this willingness to pathologise mothers who kill.[96]

Infanticide has therefore been understood by reference to the vulnerability of female biology, and by discourses of female sexuality and illegitimacy. The differential criminal justice response has therefore been premised on a paternalistic medicalisation of women's bodies and the pathologisation of women's minds.[97] The killing of infants has been understood and created as a particularly female homicide, as evidenced in the development of both the terminology and the law on infanticide.

---

[92] Section 1(3) Infanticide Act 1949. This has subsequently been amended by section 22 of the Criminal Law (Insanity) Act 2006 to replace the reference to lactation with the wording 'by reason of a mental disorder'.
[93] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012); Karen M Brennan (2013) '"A Fine Mixture of Pity and Justice": The Criminal Justice Response to Infanticide in Ireland, 1922-1949', *Law and History Review*, 31(4).
[94] Katherine O'Donovan (1984) 'The Medicalisation of Infanticide', *Criminal Law Review*, May, 259-264, at 261.
[95] Elaine Showalter, *The Female Malady: Women, Madness and English Culture, 1830-1980* (Virago 1987).
[96] Allison Morris and Ania Wilczynski, 'Rocking the Cradle: Mothers Who Kill Their Children', in Helen Birch, ed, *Moving Targets: Women, Murder and Representation* (Virago 1993).
[97] Liena Gurevich (2010) 'Parental Child Murder and Child Abuse in Anglo-American Legal System', *Trauma, Violence and Abuse*, 11(1), 18-26.

Informal Social Control

The positioning of women as essentially domestic, passive and non-threatening, illustrated in the preceding sections, has meant that women are more likely than men to be considered responsive to the imposition of informal social control.[98] The traditional institutions of marriage and motherhood are often seen as a more appropriate means of regulating female behaviour than the formal confines of the prison. The response to criminal behaviour in women is therefore 'aimed at treatment and resocialisation',[99] suggesting that female crime is evidence of abnormality. This abnormality is then overcome 'by rehabilitating them within the dominant discourses of femininity'.[100] The home, or equivalent environments of domesticity, is considered a more appropriate place for these processes of resocialisation and re-feminisation. For example, Ballinger noted that many women reprieved from sentence of death in twentieth-century England and Wales were released from the formal site of the prison to semi-penal reformatory sites, often run by female philanthropists.[101]

Informal social control assumes a separate sphere ideology. Ehrenreich and English cite the influence of the Industrial Revolution in the reification of this ideology. During this period of radical change, the position of women became uncertain; this uncertainty was resolved by recourse to the separate spheres division under which men would leave the home to work while women would assume dominance over the domestic.[102] This 'Othering' of women entrenched a perception of women as essentially different from men, without reference to the historical forces which had prised the genders apart.[103]

Malcolm L Feeley and Deborah L Little have argued that the sustained drop in women's crime rates from the eighteenth-century relates to this emerging culture of sensibilities

---

[98] Hilary Allen, 'Rendering them Harmless: The Professional Portrayal of Women Charged with Serious Violent Crimes', in Kathleen Daly and Lisa Maher, eds, *Criminology at the Crossroad: Feminist Readings in Crime and Criminology* (Oxford University Press 1998).
[99] Susan Edwards, *Women on Trial: A Study of the Female Suspect, Defendant and Offender in the Criminal Justice System* (Manchester University Press 1984) at 216.
[100] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990) at 31.
[101] Anette Ballinger, 'Feminist Research, State Power and Executed Women: The Case of Louie Calvert', in Stephen Farrall, Mike Hough, Shadd Maruna and Richard Sparks, ed, *Escape Routes: Contemporary Perspectives on Life after Punishment* (Routledge/Cavendish 2011).
[102] Barbara Ehrenreich and Deirdre English, *For Her Own Good: 150 Years of Experts' Advice to Women* (Anchor Books 1989) at 23.
[103] ibid.

which saw women's realm become the domestic realm.[104] This separation of gender roles meant that the participation of women in the criminal justice system was unacceptable; instead, the shift buttressed a new Victorian cult of domesticity and ideal womanhood, in which offending behaviour was abhorrent.[105] However, JM Beattie has identified the importance of informal social control prior to this Victorian cult of domesticity. Beattie argues that the disparity in women's crime rates from 1660 until 1800 between urban and rural areas could not be accounted for by solely demographic factors and cites in addition to these, the lack of anonymity and enhanced surveillance, targeted particularly at young, unmarried women.[106] Informal social control relates then not just to the differential punishment of women, but also to the greater surveillance of women, which has been a feature both historically and more recently.[107]

Informal social control relies on essentialist notions of women. This link was explicitly forged by the early twentieth-century theorists, such as William I Thomas who assumed that gender differences were inherent and relied heavily on the association of domesticity and womanhood.[108] Thomas claimed that as girls were predisposed to nurturing, those who fell beyond this confine were 'unadjusted'. Thomas identified informal social control within the domestic sphere as the method by which these 'unadjusted' girls could be properly socialised and rehabilitated. Other work, such as that of Eleanor and Sheldon Glueck adopted a paternalistic approach to female offending, arguing that 'delinquent' women required prolonged, if not lifetime, confinement.[109] The advocacy of indeterminate, welfare-oriented sentencing for women has been a persistent feature of the twentieth-century.[110] This ostensibly benevolent approach was used to justify harsher sentencing for

[104] Malcolm M Feeley and Deborah L Little (1991) 'The Vanishing Female: The Decline of Women in the Criminal Justice Process, 1687-1912', *Law and Society Review*, 25(4), 719-758.
[105] Nicola Lacey, *Women, Crime and Character: From Moll Flanders to Tess of the D'Urbervilles* (Oxford University Press 2008).
[106] JM Beattie, *Crime and the Courts in England, 1660-1800* (Clarendon Press 1986).
[107] In an Irish context, see Rattigan's work on the informal surveillance of unmarried women in the early twentieth-century. Clíona Rattigan (2008) '"I thought from her appearance that she was in the family way": Detecting Infanticide Cases in Ireland, 1900-21', *Family and Community History*, 11(2), 135-151.
[108] William I Thomas (1923) 'The Unadjusted Girl', in Piers Beirne, ed, *The Chicago School of Criminology* (Routledge 2006).
[109] Eleanor Glueck and Sheldon Glueck, 'Five Hundred Delinquent Females', in Freda Adler and Rita J Simon, eds, *The Criminology of Deviant Women* (Houghton Miffin 1979).
[110] This was typified in the notorious 'Muncy' statute of Pennsylvania which compelled judges to sentence women convicted of an offence punishable by a year or more to an indeterminate stay in Muncy State Industrial Home. The statute was challenged in 1966, but the Pennsylvania Supreme Court ruled that innate biological and psychological differences justified the differential treatment of women, see Joanne Belknap, *Invisible Women: Gender, Crime and Justice* (Wadsworth 1992).

cohorts of women who were viewed as more susceptible to rehabilitation; particularly those women labelled as mentally 'defective' or sexually promiscuous.[111] The informal social control of women was similarly associated with degeneracy, and justified by reference to the detrimental effect 'deviant' women could have through the social ill of illegitimacy.[112]

Again, the response to female crime which proposed such controls is justified by reference to a view of women as 'Othered', and as in need of legal protection as a class. This paternalism therefore labels prison an unsuitable environment for women because of their inherent vulnerability and 'softness'. Paternalism provides the foundation for the disproportionate use of indeterminate sentences for women, because they are viewed as more amenable to rehabilitation.[113] This 'sexualisation thesis' has been used to justify the informal social control of young women because of fears for their 'morality'.[114]

These discourses, although grounded in gender essentialism, are present in more contemporaneous thinking too. Pat Carlen identified 'regimes of femininity' in her study of women's imprisonment in Scotland, in which gender was produced by prison regimes motivated by the mantra of 'discipline, medicalise and feminise'.[115] Allen found a narrative thread in professional reports which positioned the female defendant as a woman, a mother and a wife rather than as violent, dangerous or criminal.[116] This emphasis allowed women to be situated within the domestic sphere, a criminal justice response which derived its legitimacy from the normative role of domesticity within femininity.

The preference for informal social control has been problematised on a number of grounds. Allen notes that the 'fantasy of the domestication of the violent female offender provides the final link in the process whereby she is discursively tamed, sanitised, rendered harmless.'[117] This encapsulates the problem of agency, in which the ability to respond to

[111] Lucia Zedner, *Women, Crime and Custody in Victorian England* (Oxford University Press 1991).
[112] Eleanor Glueck and Sheldon Glueck, 'Five Hundred Delinquent Females', in Freda Adler and Rita J Simon, eds, *The Criminology of Deviant Women* (Houghton Miffin 1979).
[113] Elizabeth F Moulds (1978) 'Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System', *Western Political Quarterly*, 31(3), 416-430.
[114] Meda Chesney-Lind (1974) 'Juvenile Delinquency: The Sexualization of Female Crime', *Psychology Today*, July, 43-46.
[115] Pat Carlen, *Women's Imprisonment: A Study in Social Control* (Routledge and Kegan Paul 1983) at 18.
[116] Hilary Allen, 'Rendering them Harmless: The Professional Portrayal of Women Charged with Serious Violent Crimes', in Kathleen Daly and Lisa Maher, eds, *Criminology at the Crossroad: Feminist Readings in Crime and Criminology* (Oxford University Press 1998).
[117] ibid at 60.

female violence with domesticity rather than imprisonment, is premised on the view of the female offender as non-rational and not responsible for her actions. Carlen also reminds us that attempts to 'domesticate' and 'feminise' offending women tend to miss the point that such goals are unattainable for many women.[118] Carlen found that for many of the women, the aspirations had been internalised but the lived reality was one of broken or abusive marriages and children taken into care. Wilczynski also found that informal social control was considered appropriate for *some* women only.[119] As with chivalry and pathologisation, it is evident that informal social control is applied to women differentially based on notions of conformity and on such factors as class, race, ethnicity and sexuality.

Explaining Women Who Kill

Because women kill only rarely, women's violence is not understood on a spectrum of aggressive potentiality in the same way as men's violence. This rarity has fed the need to find individualised explanations for women who kill.[120] Indeed, Morrissey has argued that these individualised explanations seek to actively diminish female agency, in order to render the women's deeds more palatable.[121] The need to explain these aberrant cases ensured that a succession of experts added their views to the corpus of knowledge in an attempt to understand violent women:

> The law weighs in, of course; and science, medicine, psychology, religion, and philosophy offer firm, obtuse opinions. New and popular disciplines - sexology, phrenology, victimology – dispense scientific theories that now seem the stuff of comedy.[122]

These explanations have tended to obscure the importance of structural factors and have produced a narrow list of tropes. Morrissey outlines vilification, mythification and victimisation, as the discourses which remove female agency.[123] She writes that there is 'a

[118] Pat Carlen, *Women's Imprisonment: A Study in Social Control* (Routledge and Kegan Paul 1983).
[119] Ania Wilczynski (1997) 'Mad or Bad? Child-Killers, Gender and the Courts', *British Journal of Criminology*, 37(3), 419-436.
[120] Bronwyn Naylor (1990) 'Media Images of Women Who Kill', *Legal Services Bulletin*, 15(1) 4-8.
[121] Belinda Morrissey, *When Women Kill: Questions of Agency and Subjectivity* (Routledge 2003).
[122] Ann Jones, *Women Who Kill* (Feminist Press 2009) at 3.
[123] Belinda Morrissey, *When Women Kill: Questions of Agency and Subjectivity* (Routledge 2003).

very limited range of stock stories about women who kill…. domesticity, pathology and sexuality, as wives, mothers, whores or daughters.'[124]

The two categories of infanticide and of women who kill abusive partners have absorbed the majority of feminist thought on the issue of women who kill.[125] These twin categories, which represent motherhood and heteronormative standards of behaviour, present examples of the neutralisation of women who kill through the discursive production of the women as lacking in agency and culpability. However, a focus on women who kill their partners in abusive relationships is clearly 'not a culturally unthinkable use of violence by women.'[126] Marie Fox too has claimed that there is no script for talking more generally about women who kill.[127] Through the exploration of the 'unusual' women who kill, the boundaries of acceptable womanhood can be further explored. Seal writes that to confine oneself to the exploration of only the 'ideologically sound' female killer is to deny a diversity of subjectivities and to continue to explore women in their capacity as wives and mothers.[128]

Women who kill present a dilemma for society. Their violence is less common, and therefore less expected, than male violence; the act itself less easily explained by reference to 'inherent aggression'.[129] Rather, women who kill continually appear to require more thought and a significant degree of agonising over how they should be explained.[130] The literature has identified the narrow range of interpretations evident in such cases. For example, Ballinger used the concepts of sexuality, respectability, domesticity and motherhood through which to analyse the discourses on twentieth-century women who were sentenced to death, drawing her categories from the most prominent themes in her archival analysis.[131] Seal utilised a typology of five categories through which to explain the discourses on women who kill: masculine, muse/mastermind dichotomy, the damaged

[124] ibid at 167.
[125] Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010).
[126] ibid at 1-2.
[127] Marie Fox, 'Crime and Punishment: Representations of Female Killers in Law and Literature', in John Morison and Christine Bell, eds, *Tall Stories? Reading Law and Literature* (Dartmouth 1996).
[128] Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010) at 3.
[129] Bronwyn Naylor (1990) 'Media Images of Women Who Kill', *Legal Services Bulletin*, 15(1), 4-8.
[130] Susan Edwards, *Women on Trial: A Study of the Female Suspect, Defendant and Offender in the Criminal Justice System* (Manchester University Press 1984).
[131] Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000).

personality, the respectable woman, and the witch.[132] Worrall noted that criminal justice professionals used the ideologies of domesticity, pathology and sexuality as an heuristic device when judging offending women.[133] Fox articulates a further framework of woman as more evil than man, woman as the dupe of man, and woman as mad.[134] The identification of these explanatory short-hands for women who kill has exposed both the limited and limiting nature of the discourses on women who kill.

Such acts offend the culturally held assumptions about the nature of women, and the proper attributes of femininity, and present us with the task of bending our understanding in a way which leaves these cultural values intact, while simultaneously explaining the actions of the individual woman. Therefore, the woman can be rendered a victim, an actor without agency, who can remain safely within the traditional construction of the appropriately female. Alternatively, she can be removed from this realm, and described as 'Not Woman', the 'Other'. In this way women face stark polarities of representation upon committal of the unthinkable act.[135]

Conclusion

Existing explanations of women who kill are problematic; such women are constructed as either 'not criminal' or 'not woman'.[136] Women can be created as 'not criminal' through processes of chivalry. Identified by Moulds as the superficial manifestation of paternalism,[137] this approach seeks to mitigate the crimes of women by denying them agency, an approach which can facilitate a more merciful criminal justice response.

In contrast to responses couched in chivalry, some women who kill have been discursively constructed as 'not woman'; the masculinisation of these cases has rendered the women abject and inexplicable. Venturing so far from the received wisdom of normative

[132] Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010).
[133] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990).
[134] Marie Fox, 'Crime and Punishment: Representations of Female Killers in Law and Literature', in John Morison and Christine Bell, eds, *Tall Stories? Reading Law and Literature* (Dartmouth 1996).
[135] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990).
[136] ibid.
[137] Elizabeth F Moulds (1978) 'Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System', *Western Political Quarterly*, 31(3), 416-430.

femininity as maternal and nurturing, such women can be monsterised and presented as totemic icons of depravity.[138]

Women can also be rendered 'not criminal' through discourses which deny them the capacity to act with deliberateness and intention. The reduction of women to individual-level pathology is evident in the eager willingness to write-off women's actions as evidence of abnormality or irrationality. This is evident in the framing of certain cohorts of women who kill, such as those who kill abusive partners or their children, as detached from intentionality when they act. Such a focus sidesteps consideration of broader structural factors, such as the endemic nature of men's violence against women and children or the essentialist understandings of women as maternal. The pathologisation and the medicalisation of women who kill has also been entrenched by the creation of infanticide as an offence applying to women who kill their infants, which is premised on the 'Othering' of the female body and reproductive system. This discrete category of killing has worked to further maternalise the female body,[139] and to entrench notions of women as emotional and irrational.

The chapter has also demonstrated the role of informal social control as a criminal justice response to women considered 'deviant'. These responses, while ostensibly extending leniency, are problematic because they are premised on woman's lesser personhood, and because they can justify harsher treatment of women 'for her own good'. This paternalism dictates that women require differential treatment because they are a class of persons who should be 'protected' from their bad decisions. Instead of the formal confines of the criminal justice system, women are essentialised and are reclaimed into the assumed feminine ideal of domesticity.

[138] Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave 2010).
[139] Mary Joe Frug (1992) 'A Postmodern Feminist Legal Manifesto (An Unfinished Draft)', *Harvard Law Review*, 105(5), 1045-1075.

Chapter Two

The Death Penalty

Introduction

This chapter reviews the literature on capital punishment in order to contextualise the research herein on the experience of women and the death penalty in post-1922 Ireland. The chapter is divided into two parts. Part One considers the practice of the death penalty in Ireland post-1922 within the historical context of the nineteenth- and twentieth-century debates on capital punishment. These sections overview the decline and abolition of the death penalty, focusing on how abolitionist movements took hold in Great Britain, Ireland and in Europe; it also examines the case of American Exceptionalism.[1] These discourses of reform and abolition are evident in many of the case studies of death-sentenced women herein. A review of the literature can situate these strands of thought within broader patterns.

Part Two of the chapter explores women and the death penalty and the concept of capital punishment as a gendered penalty, through examination of differential criminal justice responses based on gender, differential methods of execution, the creation of gender-specific crimes and the framing of capital statutes and discourses on abolition. These discourses historically presented capital punishment as an inappropriate penalty for women. The chapter also overviews the contemporary context of women and capital punishment in the United States, drawing from the existing literature themes of chivalry as mediated by intersectionality, and of a discriminatory penalty that is applied to women at a disproportionately low rate.

[1] The focus on the Western experience of capital punishment is not to diminish the importance of a global understanding of capital punishment. However, the review of the literature was concerned particularly with Ireland, Great Britain and the European abolition movement and the example of the United States. This focus is justified by reference to the particular relevance of these areas of study. The research period is Ireland post-Independence, and this necessarily entails a discussion of the law and practice of capital punishment in Great Britain as substantially impacting the history of the death penalty in Ireland. Further, the abolition movement in Great Britain, as well as the abolitionist bent across Europe and coming from supranational European organisations, contributed to Irish discourses on the death penalty. Finally, in the case of the US, it offers an example of a Western jurisdiction which retains capital punishment, with the shared touchstone of the common law, as well as a wealth of current scholarship on women and capital punishment.

Part One

The Death Penalty

Capital punishment has been, in its various incarnations, a 'cultural universal', representing the ultimate sanction of the law, employed across continents and spanning millennia.[2] David Garland has traced the European trajectory of the punishment in three broad periods,[3] from the early modern period, 1400 to 1700, during which executions became manifestations of the burgeoning absolutist monarchies.[4] In the late eighteenth-century until the mid-twentieth-century, capital punishment became a tool for the punishment of 'ordinary' criminals. This was particularly notable through the explosion of capital statutes targeted at property offences which occurred in the period 1688 to 1815, known as the 'Bloody Code'.[5] However, in the nineteenth-century punishments became more efficient and uniform,[6] as the number of capital statutes was reduced. By the mid-nineteenth-century, the death penalty was available only for murder or serious political crimes such as treason.[7] During this period, punishment also shifted its focus from the infliction of bodily torture to the deprivation of liberty.[8] The late modern period began post-World War II and corresponded with an ethos of liberalism and social democracy that saw emerging welfare states reconceptualise the state's duty to its citizens. The trauma of two world wars forged

[2] David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Oxford University Press 2010).
[3] ibid. Anette Ballinger has exposed the absence of gendered analysis within Garland's *Peculiar Institution*, and argued convincingly that the death penalty cannot be understood without recourse to gender. Ballinger is critical of Garland's claim to 'objective knowledge', see Anette Ballinger (2012) '"Clear-Eyed Description and Objective Analysis": A Peculiar History of the Death Penalty', *British Journal of Criminology*, 'A Symposium of Reviews of *Peculiar Institution*', 52(1), 202-216.
[4] David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Oxford University Press 2010).
[5] Douglas Hay, 'Property, Authority and the Criminal Law', in Douglas Hayes, Peter Linebaugh, John G Rule, EP Thompson and Cal Winslow, eds, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (Allen Lane 1975). Hay argued that the increase in the number of capital statutes did not signal a corresponding increase in the number of executions which, Hay argues, would have been undesirable for the authorities. Hay claims that the Bloody Code was not intended to be used efficiently; through the concepts of 'majesty', 'justice' and 'mercy', the Code balanced might with selective compassion.
[6] These changes also saw the traditional procession, from place of detention to place of execution, abandoned in a bid to bring the practice more fully within official control. The places of execution were also moved, to reflect a more orderly association of capital punishment and the bureaucracy and institutions of the criminal justice system; for example from the 'tree' at Tyburn, to outside Newgate Prison, and in Dublin from St Stephen's Green to outside Dublin's Newgate Prison in 1783. See Brian Henry, *Dublin Hanged: Crime, Law Enforcement and Punishment in Late Eighteenth-Century Dublin* (Irish Academic Press 1994); David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Oxford University Press 2010).
[7] David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Oxford University Press 2010).
[8] Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Penguin 1979).

a new discourse of human rights, and the turn in penal policy towards rehabilitation rendered capital punishment obsolete in many jurisdictions.

Decline and Abolition

The death penalty is no longer a mainstay of penal policies in most Western countries. Garland argues that this process of decline and abolition can be linked to Norbert Elias's thesis of the 'European civilising process' which was marked by a declining tolerance for violence.[9] In an environment which stressed popular consent rather than monarchical whims, the death penalty would prompt questions as to its moral justifications. Such ideologies were largely prefigured by eighteenth-century Enlightenment thinking,[10] and were taken on by utilitarian writers like Jeremy Bentham,[11] as a moral case for the severe curtailment of capital punishment began to be made. However, the path to abolition remained a long one.

Decline and Abolition of the Death Penalty in Great Britain

In Great Britain, the opposition to the death penalty which had emerged in the late-eighteenth-century, in the thinking of individuals like Bentham, was followed by reform and abolitionist movements which were particularly associated with Quaker groups and individuals like John Howard and Elizabeth Fry.[12] Throughout the early-nineteenth-century, the list of capital statutes was continually abrogated and just 15 remained when Victoria came to the throne in 1837.[13]

In response to fresh debate, the 1866 Royal Commission was convened with the task of exploring the particular issue of public executions. When it reported, the recommendation of the Commission was to divide the category of murder into first degree and second degree levels of culpability, with capital punishment reserved for first degree murders. Classifying infanticide as a non-capital offence and the removal of executions from public

[9] David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Oxford University Press 2010).
[10] For example, Cesare Beccaria, *On Crimes and Punishments and Other Writings* (Richard Bellamy ed, Cambridge University Press 1995).
[11] Hugo Adam Bedau (1983) 'Bentham's Utilitarian Critique of the Death Penalty', *The Journal of Criminal Law and Criminology*, 74(3) 1033-1065.
[12] The influence of Nonconformist religious persons is critically important to the sustained attempts at abolition, see Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (Macmillan 1978).
[13] James B Christophe, *Capital Punishment and British Politics: The British Movement to Abolish the Death Penalty, 1945-1957* (Allen & Unwin 1962).

view were also recommended: five members of the Commission had recommended total abolition.[14] Abolitionists had dissented from this last point regarding public executions, believing that to take away the immediacy of the act of execution would to an extent render the horror less pressing, and provide a 'stay of execution' for the death penalty.[15] Ultimately, only the recommendation on the abolition of public execution was adopted and the Capital Punishment Amendment Act was passed in 1868.

The next significant reforms in Great Britain did not occur for decades. As outlined in the previous chapter, the Infanticide Acts of 1922 and 1938 established infanticide as an offence of manslaughter which no longer carried the death penalty. Beyond these reforms, the 1868 status quo remained largely unchanged until the 1950s. During this decade, the high-profile cases of Timothy Evans, Derek Bentley and Ruth Ellis called into question the legitimacy of capital punishment.[16] These cases ensured that capital punishment remained in the headlines and public consciousness.

The 1957 Homicide Act was the prerequisite reform of the law of murder which made eventual abolition of capital punishment possible.[17] The Act significantly reduced the number of capital sentences passed, through the classification of murders into capital and non-capital offences,[18] and became the catalyst for eventual abolition. In 1965, the Murder (Abolition of Capital Punishment) Act was passed. The Act suspended the death penalty for a period of five years, at the end of which time, should the legislation lapse, the status quo created by the 1957 Homicide Act would reassert itself. However, the suspension called into question the necessity of capital punishment in any form as it was not having the 'multiplier' effect on the murder rate of which alarmists had warned.[19] Finally, after decades of political wrangling and debate, in December 1969, both Houses of Parliament

[14] ibid.
[15] Harry Potter, *Hanging in Judgment: Religion and the Death Penalty in England from the Bloody Code to Abolition* (SCM 1993).
[16] Lizzie Seal (2011) 'Ruth Ellis and the Public Contestation of the Death Penalty', *Howard Journal of Criminal Justice,* 50(5), 492-504; Lizzie Seal, *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory* (Routledge 2014). Seal notes that while these cases are *now* understood as the 'pivotal' cases in abolition, the adoption of these cases as arguments for reform was more nuanced.
[17] James B Christophe, *Capital Punishment and British Politics: The British Movement to Abolish the Death Penalty, 1945 to 1957* (Allen & Unwin 1962).
[18] Lizzie Seal notes that this two-tier classification continued to draw dissatisfaction from the general public regarding which cases were capitally convicted and which were not, see Lizzie Seal, *Capital Punishment in the Twentieth-Century: Audience, Justice, Memory* (Routledge 2014).
[19] Kevin Manton (2011) 'Labour Governments and Capital Punishment, 1924-1970', *Labour History Review* 41(4), 16-33.

passed the legislation to remove murder from the list of capital crimes.[20] The final execution in the United Kingdom had taken place in 1964.[21]

Decline of the Death Penalty in Ireland

In contrast to the political manoeuvrings which accompanied the decline of capital punishment in Britain, the decline of the death penalty in Ireland took a less tortuous path. Capital punishment in Ireland was abolished through a process of mainly uncontested legislation culminating with a constitutional referendum in 2001. Between 1923 and 1954, when the last person was put to death by the State, a total of 35 persons had been executed.[22]

Gerard O'Brien claims that throughout the nineteenth- and early-twentieth-centuries in Ireland, capital punishment never became a pressing moral question.[23] Muted interest in capital punishment in Ireland can be demonstrated by the rather meagre participation of Irish delegates at the 1866 Royal Commission on Capital Punishment.[24]

Post-Independence, abolition was considered during the negotiations on the new Constitution of 1922 and an abolitionist measure was included in one of three drafts prepared; however the provision did not make it into the finished document.[25] Instead, Article 73 of the Constitution carried over the Offences Against the Person Act 1861 which would henceforth see the death penalty handed down to persons who had attained the age of 17 who were found guilty of murder.[26]

---

[20] The legislation applied to England, Wales and Scotland. Northern Ireland took this step in 1973. The death penalty remained for serious political offences, such as treason, and for fire in a naval dockyard for some time after this, although no one was sentenced to death under these provisions.

[21] Kevin Manton (2011) 'Labour Governments and Capital Punishment, 1924-1970', *Labour History Review* 41(4), 16-33.

[22] Tim Carey provides summaries of 29 cases, excluding the six persons executed for political crimes, in Tim Carey, *Hanged for Murder: Irish State Executions* (Collins Press 2013). The figure of 35 does not include the 81 persons executed during the Civil War, see David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91.

[23] Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006).

[24] WE Vaughan, *Murder Trials in Ireland, 1836-1914* (Four Courts Press 2009).

[25] As Gerard O'Brien writes, one of the authors of this draft, James Douglas, was a Quaker and therefore very much within the tradition of abolitionism, Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006).

[26] Thomas O'Malley (1995) 'Sentencing Murderers: The Case for Relocating Discretion', *Irish Criminal Law Journal*, 5(1), 31-66.

Thereafter, the high levels of violence which marked the early, turbulent years of the new Irish State rendered abolition politically unthinkable. The War of Independence was followed by the Civil War and in the context of such unrest the imperative of retaining capital punishment was accepted. As an indicator of the civil unrest, between November 1922 and May 1923, in chaotic and deeply suspect circumstances, a total of eighty-one anti-Treaty prisoners were executed by firing squad after being condemned to death by military courts.[27]

The institution of capital punishment remained inextricably linked to British rule in the cultural imagination. O'Brien argues that this association of capital punishment with Britain represented a form of collective national amnesia, claiming that throughout the nineteenth-century the majority of executions and death sentences were imposed on ordinary criminals.[28] Nonetheless, despite the uses to which the death penalty had actually been directed, its connection with British persecution of the Irish, and of Irish subversives especially, was one which would linger through the twentieth-century.[29] David M Doyle and Ian O'Donnell argue, ironically, that it was retained by the fledgling State for the very same purposes, namely, to oppose subversive political forces.[30]

There also existed a conflict between Ireland's past, defined by insurrection and political violence, and the retention of the death penalty. For decades, the Dáil[31] included many elected representatives who themselves had been sentenced to death or imprisoned in their earlier, revolutionary careers. Eamonn De Valera had once lived under a sentence of death, yet his Fianna Fáil Government executed 17 people between 1932 and 1948.[32] However, despite this connection between the new political class in Ireland and capital punishment,

[27] As noted earlier, this cohort of 81 is generally excluded from a count of the 35 persons executed in post-Independence Ireland. David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91.
[28] Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006).
[29] Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006); David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91; David Matthew Doyle (2015) 'Republicans, Martryology, and the Death Penalty in Britain and Ireland, 1939-1990', *Journal of British Studies*, 54(3), 703-722.
[30] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91.
[31] The Dáil is the lower house of the Oireachtas, the Irish parliament, it is composed of directly elected representatives (TDs). The upper house is known as the Seanad and is chiefly composed of persons appointed by government.
[32] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91.

there was no sustained abolition movement in Ireland akin to the often feverish activity in Britain. O'Brien argues that while individual executions could occasionally spark interest, particularly if viewed as political, the interest was never sustained between executions. He writes that the declining level of capital crime in Ireland, and the rarity of executions, never allowed abolition feeling to gather momentum.[33]

Doyle and O'Donnell suggest that Irish national feeling was decidedly opposed to capital punishment, due to its associations with British rule, and that this antipathy to capital punishment was illustrated post-1922 by the continuing Irish policy of paying for the services of British executioners, who travelled over by boat to perform executions. Doyle and O'Donnell argue that the inability of Irish governments to innovate and implement a system of capital punishment which would dispense with the need to employ a hangman from England 'speaks volumes about the level of public antipathy and unease (perhaps revulsion) towards the practice'.[34] However, it is doubtful whether such sentiments can be attributed wholesale to the Irish people. The association, in the Irish psyche, between colonialism and the spectre of the hangman may have ensured that the imported hangmen were seen as folk devils, a convenient means of subsuming unease about the continuation of the practice of capital punishment. Certainly, O'Brien writes that when the crime was not one of a political nature, most hangings attracted little attention and few gathered outside the gates of Mountjoy Prison to protest.[35] Further, the military-style executions in the early years of the State provoked little soul-searching from the populace.[36] What this does appear to demonstrate, is the degree of continuity which existed between the period of

[33] Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006).
[34] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91, 69. Doyle and O'Donnell have written more fully on this phenomenon of the 'English hangman' elsewhere. Irish executions were performed by English hangmen both pre- and post-Independence. Following Independence, English executioners, which effectively meant either Thomas or later Albert Pierrepoint, were recompensed for their travel to Ireland to perform hangings. Despite attempts to train one Irish person for the position, this project was abandoned when he proved unable for the task and the reign of the Pierrepoints continued. See, David M Doyle and Ian O'Donnell (2014) 'A Family Affair? English Hangmen and a Dublin Jail', 1923-54, *New Hibernia Review*, 18(4), 101-118.
[35] Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006). Indeed, Doyle has contrasted the Irish government's petitioning of Irish persons sentenced to death in England for subversive murders, as well as persons capitally convicted for political offences in Northern Ireland, with the Irish commitment to retaining and using capital punishment for these ends in Ireland. See, David Matthew Doyle (2015) 'Republicans, Martryology, and the Death Penalty in Britain and Ireland, 1939-1990', *Journal of British Studies*, 54(3), 703-722.
[36] Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006).

British rule and the new Irish State.[37] While profound transformations did occur in some areas, such as the disbandment of the Royal Irish Constabulary, many less contentious elements of rule stayed firmly as they had been.[38]

However, questions about the retention of the death penalty began to surface once the decade of uncertainty and turmoil that was the 1920s had passed. Dáil questions probing governmental intentions to abolish capital punishment began appearing with more regular frequency from the 1930s, often posed by Seán MacBride, one of Ireland's few committed and vocal abolitionists; these always met with an answer in the negative.[39] When the new Constitution was adopted in 1937, it retained reference to the death penalty, notably at Article 40.4.5.[40]

As referenced previously, it was only when executions were considered political, that debate on the issue became more vocal. During the period 1939 to 1945, known as 'the Emergency' in Ireland, war-time executions authorised by military courts caused a significant degree of disquiet.[41] During this period, Doyle and O'Donnell write that the 'mercy ratio' declined markedly, as more persons were executed than had their sentence commuted. This was in contrast to the general downward trend in executions post-1922.[42]

This spike provoked concern, and in 1939, a committee of judges was convened by the Department of Justice to produce recommendations on the possible reform of capital punishment.[43] In 1941, the committee recommended some changes to the status of insanity and infanticide, and recommended the minimum age be increased to 18 years. Notably, the

[37] ibid.
[38] Mary Rogan, for example, notes that at Independence, little about the prison system changed beyond the badges on the guards' hats. Mary Rogan, *Prison Policy in Ireland: Politics, Penal Welfarism and Political Imprisonment* (Routledge 2011).
[39] Thomas O'Malley (1995) 'Sentencing Murderers: The Case for Relocating Discretion', *Irish Criminal Law Journal*, 5(1), 31-66.
[40] Constitution Review Group, *Report of the Constitution Review Group* (Stationery Office 1996) at 281-85.
[41] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91. However, it has been argued that this system of military courts was not intended to be absolute and to operate with efficiency, to this end the government retained the power to commute sentences of death delivered by the courts, see Seosamh Ó Longaigh, *Emergency Law in Independent Ireland, 1922-48* (Four Courts Press 2006). This policy bears some relation to Douglas Hay's theory of how the 'Bloody Code' was intended to operate, see Douglas Hay, 'Property, Authority and the Criminal Law', in Douglas Hay, Peter Linebaugh, John G Rule, EP Thompson and Cal Winslow, eds, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (Allen Lane 1975).
[42] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91.
[43] Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006).

recommendations stopped considerably short of total abolition.[44] Only one reform was implemented; the Infanticide Act of 1949 which created the specific offence of infanticide as a non-capital offence.[45]

A more sustained discussion was evident during the 1950s, when renewed debate on capital punishment marked Ireland as part of a European trend towards reserving capital punishment for a diminishing roster of offences.[46] The impetus came again from Seán MacBride, who proposed a motion that a Select Committee be formed to inquire into abolition.[47] In 1956, the proposed suspension of capital punishment for an experimental period was also debated, this time in the Seanad.[48]

Finally, the Criminal Justice Act 1964 saw the curtailment of capital punishment in Ireland. Subsequent to its enactment the only crimes which attracted the death penalty were treason, offences under military law, and capital murder, defined as the murder of a member of An Garda Síochána, a prison officer in the course of their duty or the murder of a foreign Head of State or Diplomat for a political purpose. The penalty for murders not falling within these categories was penal servitude for life.[49] By this time, commutation of death sentence had become something of a given. Indeed, when James Kelly was sentenced to death for murder in 1962, Doyle and O'Donnell write that 'commutation was inevitable'.[50] Kelly had been the last person sentenced to death prior to the reforms of 1964.

---

[44] ibid.

[45] See the previous chapter for an overview of the legislative developments on infanticide. Infanticide in an Irish context is discussed in detail in the following chapter.

[46] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91.

[47] Thomas O'Malley (1995) 'Sentencing Murderers: The Case for Relocating Discretion', *Irish Criminal Law Journal*, 5(1), 31-66.

[48] ibid.

[49] ibid.

[50] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91, at 90. Thomas O'Malley has described the year 1963 as 'a golden age in Irish law reform,' which saw the appointment of an ambitious young Minister for Justice, Charles Haughey, in 1961, see Thomas O'Malley (1995) 'Sentencing Murderers: The Case for Relocating Discretion', *Irish Criminal Law Journal*, 5(1), 31-66. Mary Rogan also comprehensively demonstrates the importance of this manner of individual motivation during the period in shaking up a moribund Department of Justice and implementing reforms, see Mary Rogan, *Prison Policy in Ireland: Politics, Penal Welfarism and Political Imprisonment* (Routledge 2011); Gerard O'Brien writes that Haughey had taken the Justice portfolio with a commitment that no one would be executed during his tenure, see Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006).

Between the Criminal Justice Act 1964 and abolition of capital punishment in 1990, 11 persons were convicted of capital murder and sentenced to death; all were reprieved.[51] Final removal from the statute books came in the Criminal Justice Act 1990.[52] This legislation was met with approval and an awareness that the move was in line with the general European trend;[53] many mentions were made of Ireland's position in the European Community as well as its obligation under various international organisations. The Minister for Justice announced that, 'In finally abolishing the death penalty Ireland will be joining the vast bulk of western developed nations who have already done so.'[54] The Criminal Justice Act 1990 abolished the death penalty from the statutes,[55] a move 'met with widespread, if not unanimous, public approval'.[56]

In June 2001, the Irish people voted to remove all reference to capital punishment from the Constitution and introduce a constitutional ban on capital punishment. The referendum campaign was 'muted', with all major parties supporting the amendment.[57]

Claudia Whitman, writing about the event, reminds us that it marked Ireland as unique among European countries:

---

[51] Thomas O'Malley (1995) 'Sentencing Murderers: The Case for Relocating Discretion', *Irish Criminal Law Journal*, 5(1), 31-66.

[52] In the early 1980s, a Fine Gael/Labour coalition had promised abolition in their Programme for Government; the proposed legislation did not survive the election despite passing through the Seanad. Again in 1984 under another Fine Gael/Labour coalition, a group of Independent Senators proposed the Criminal Justice (Abolition of Capital Punishment) Bill. In 1984, Amnesty International had also recommitted to its campaign of Irish abolition. See 'Mitchell urges abolition of hanging' *Irish Times* (16 October 1981); 'Ross moves Bill to abolish death penalty' *Irish Times* (14 February 1981); 'Amnesty campaign on hanging reactivated' *Irish Times* (12 October 1984). The Labour Party had adopted an abolitionist position since 1976, this policy also saw Labour's principled opposition to the various pieces of security legislation which were proposed in response to 'the Troubles' in Northern Ireland, and in their dismay at Fine Gael's dismissal of claims of heavy-handed Garda interrogation methods being used by the Gardaí. Michael Gallagher, *The Irish Labour Party in Transition, 1957-82* (Manchester University Press/Gill and Macmillan 1982).

[53] The discussion on abolition had been informed by the notoriety of cases of miscarriage of justice such as the Birmingham Six and the Guildford Four which were referenced by speakers during the debates, see Dáil Debates, Criminal Justice (No.2) Bill, Second Stage, Friday 1 June 1990.

[54] Ray Burke, Fianna Fáil, Dáil Debates, Criminal Justice (No.2) Bill, Second Stage, Friday 1 June.

[55] Concern was raised in some quarters by the mandatory life sentence of 40 years that was substituted for sentence of death in the 1990 Act, see for example Charlie Flanagan, Fine Gael, Dáil Debates, Criminal Justice (No.2) Bill, Second Stage, Friday 1 June 1990.

[56] Thomas O'Malley (1995) 'Sentencing Murderers: The Case for Relocating Discretion', *Irish Criminal Law Journal*, 5(1), 31-66, at 1. Despite cross-party political support, An Garda Síochána remained opposed to abolition, the Garda Representative Association had vociferously opposed the Bill, arguing that the matter should be put to a referendum. At its annual conference in 1990 a motion was passed opposing the abolition, see Dáil Debates, Criminal Justice (No.2) Bill, Second Stage, Friday 1 June 1990; 'Referendum proposed as plan to abolish hanging rejected' *Irish Times* (2 May 1990).

[57] Jane O'Mahony (2001) 'Not so Nice: The Treaty of Nice, the International Criminal Court, the Abolition of the Death Penalty – the 2001 Referendum Experience', *Irish Political Studies*, 16(1), 201-213, at 206.

> In many countries, the death penalty was abolished before consensus was reached or a vote taken. Individual leaders, in the name of government, made the decision that capital punishment did not further the goals of either their individual country or the global community, and took action…. Despite the support for capital punishment in polls, the only time a European country voted on the death penalty the results were a clear mandate for abolition.[58]

European Decline

The decline of capital punishment in Great Britain and Ireland must be read within the context of European abolition, a movement which coalesced particularly following World War II.[59] The genocide perpetrated during WWII left a lasting legacy of abhorrence towards capital punishment, evident in West Germany's abolition of the death penalty in 1949, and in Italy's abolition of peacetime capital punishment in 1947.[60] The formation of supranational political institutions following WWII, which united countries by their shared goals, also hastened the decline of capital punishment.[61] Once these organisations had formed, political will could drive the goal of abolitionism, and both the Council of Europe and the European Union have been staunch opponents of capital punishment.[62]

In 1950, the Council of Europe, a newly constituted grouping of Parliamentarians from ten Western European countries, produced a joint document, which would become the European Convention on Human Rights (ECHR); in its earliest pronouncement on the issue, the ECHR contained a provision on the proper application of the death penalty, however in 1985 Protocol No.6 called for the abolition of capital punishment during

[58] Claudia Whitman (2001) 'The Death Penalty as the Will of the People', *Peace Review*, 13(4), 519-523, at 521.

[59] While the Nuremberg War Trials, conducted in 1945 and 1946 to try top-ranking Nazi officers, oversaw the executions of persons convicted of War Crimes, an emerging reluctance to impose capital punishment can be discerned even here in the importance of being seen to conduct fair trials. Borgwardt argues that in light of the Atlantic Charter and the Yalta Conference which established a policy for post-war Europe, the leaders of US, UK and USSR were tied into a commitment to the rule of law and justice, in Elizabeth Borgwardt (2005) 'Re-examining Nuremberg as a New Deal Institution: Politics, Culture and the Limits of Law in Generating Human Rights Norms', *Berkeley Journal of International Law*, 23(2), 401-462. The only European country which still retains and carries out capital punishment is Belarus, although the exact figures of persons condemned and executed annually are unknown, in Amnesty International, *Death Sentences and Executions in 2011* (Amnesty International 2013).

[60] John R Schmidt (2007) 'The EU Campaign Against the Death Penalty', *Survivor* 49(4), 123-134.

[61] Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (3rd ed, Oxford University Press 2002).

[62] Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (3rd ed, Oxford University Press 2002); John R Schmidt (2007) 'The EU Campaign Against the Death Penalty', *Survivor* 49(4), 123-134.

peacetime.[63] In 1994 the Council of Europe declared that membership was contingent on an execution moratorium, as well as signing and ratification of this Protocol.[64] In 2002, the Protocol No.13 went further in calling for an end to capital punishment under all circumstances.[65]

The European Union has likewise done much to highlight the issue of capital punishment. As part of the 'ever closer union' envisaged for the EU, common policies were adopted on which to construct a common ideological stance. The death penalty became one of these common policies. In 1998, following the earlier pre-conditions set out in 1994 by the Council of Europe, abolition became a pre-condition of EU membership.[66] In 2000, the EU's Charter of Fundamental Freedoms again reaffirmed that abolition of capital punishment was a prerequisite for members and prohibited the extradition of persons to countries where they would face the death penalty.[67]

International pressure has also been brought to bear on retentionist countries by the United Nations, which encompasses under its vast remit a number of international instruments that relate to the death penalty,[68] for example, the International Covenant on Civil and Political Rights (ICCPR) adopted in 1966 and brought into force in 1976. In 1989, the UN General Assembly adopted the Second Optional Protocol to the ICCPR which called for abolition of capital punishment in peacetime. The UN also incorporates the Convention Against Torture, as well as the Universal Declaration of Human Rights. These instruments all embody a broadly abolitionist stance.[69]

The momentum behind the wave of abolition may be attributed to the acceptance of capital punishment as a fundamental human rights issue, an acceptance which was fostered by changing discourses on capital punishment throughout the twentieth-century. During this period, and in the aftermath of WWII, influential supranational organisations such as the Council of Europe, the EU and the United Nations have supplied the political will

[63] John R Schmidt (2007) 'The EU Campaign Against the Death Penalty', *Survivor* 49(4), 123-134.
[64] Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (3rd ed, Oxford University Press 2002).
[65] Eric Neumayer (2008) 'Death Penalty: The Political Foundations of the Global Trend Towards Abolition', *Human Rights Review*, 9(2), 241-268.
[66] John R Schmidt (2007) 'The EU Campaign Against the Death Penalty', *Survivor* 49(4), 123-134.
[67] ibid.
[68] Amnesty International, *International Standards on the Death Penalty* (Amnesty International 2006)
[69] Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (3rd ed, Oxford University Press 2002); Amnesty International, *International Standards on the Death Penalty* (Amnesty International 2006).

necessary to effect change across Europe.[70] The domino effect of abolition across Europe had the effect of making retention harder to justify:

> [O]nce all the major European nations had come into line, they proceeded to regard the new abolitionist consensus as a transnational norm, a human rights principle that ought to be observed by all nations everywhere. Countries that were once retentionist holdouts now became abolitionist proselytizers, thereby increasing the pressure on nations that had not yet abolished.[71]

American Exceptionalism

Conversely, the United States has come to be seen as out of step with other Western democracies in its retention of the death penalty. Garland argues that to see the US as a case of exceptionalism is to take only the comparison between the US and Europe as it stands presently.[72] Garland suggests that the US remained in step with European developments towards abolition until the 1970s, and has since then been subject to particularly American cultural forces which have seen capital punishment retained in a majority of states. The contradiction across the US is that it encompasses both those states which were in the vanguard of abolition, especially those in the north and north-east, as well as the Southern states which have remained retentionist. To present a case of American exceptionalism glosses over the differences within the country itself, such as the emergence of executions as a phenomenon of the Southern states alone.

Specific political, historical and cultural factors have been identified as contributing to US retention. For example, the twentieth-century abolitionist movements across Europe were counter-majoritarian; in the US federal system the importance of states' rights over criminal justice policy was a barrier to forced change. Stuart Banner has argued that the discourses on capital punishment in the US moved from debate grounded in enlightened values to one dominated by discussions of states' rights to execute people.[73] Garland also

[70] Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (3rd ed, Oxford University Press 2002).
[71] David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Oxford University Press 2010) at 99.
[72] ibid. It should be noted that many other jurisdictions internationally retain and continue to apply the death penalty within their criminal justice systems.
[73] Stuart Banner, *The Death Penalty: An American History* (Harvard University Press 2002).

refers to the historical legacy of the Southern commitment to slavery and racially targeted violence.[74]

The clustering of arguments in the Supreme Court has also mired debate and rendered it a question of legalism, rather than morality.[75] Under the umbrella of the civil rights movement in the 1960s, the NAACP's Legal Defense Fund selected certain death cases which could be used as a battleground to question the constitutionality of the penalty itself. In 1972, the campaign seemed to have achieved their ultimate goal in the Supreme Court decision of *Furman v Georgia*,[76] in which the Court voted 5 to 4 that capital punishment violated the Eighth and Fourteenth Amendments. The penalty was seen as capricious in its application, disproportionately affecting black people and the poor. The infrequency with which death sentences were handed down raised concerns about consistency of sentencing.[77] This resulted in the striking down of every state and federal capital statute in America.[78]

The response to *Furman*, however, was an emboldened pro-capital punishment movement. Within two years, states had begun to pass new capital statutes which incorporated procedural safeguards, and in 1976 a group of cases which sought to test the constitutionality of these new statutes saw the Supreme Court validate the death penalty once again.[79] However, Robert Weisberg has argued that since the early 1980s bias and discriminatory practices have again been allowed to proliferate.[80]

---

[74] David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Oxford University Press 2010).
[75] ibid.
[76] 408 US 238 (1972). William Henry Furman was an African American man convicted for the murder of white householder William Micke in 1967. The Supreme Court, in five votes to four, held that capital punishment violated the Eighth and Fourteenth Amendments to the Constitution (relating to due process rights and the prohibition against cruel and unusual punishment), this finding was justified by reference to arbitrary and capricious application of the death penalty, see David M Oshinsky, *Capital Punishment on Trial: Furman v Georgia and the Death Penalty in Modern American* (University Press of Kansas 2010).
[77] Patrick E Higginbotham (2007) 'A Reflection on *Furman*', *American Journal of Criminal Law*, 34(2), 199-205.
[78] David M Oshinsky, *Capital Punishment on Trial: Furman v Georgia and the Death Penalty in Modern American* (University Press of Kansas 2010).
[79] *Gregg v Georgia* 428 US 153; *Profitt v Florida* 428 US 242; *Jurek v Texas* 428 US 262.
[80] Robert Weisberg (1983) 'Deregulating Death,' *Supreme Court Review*, 305-396. Various studies have demonstrated that disparity still exists. A meta-analysis from the General Accounting Office found that in 82 per cent of studies, the race of the victim was influential in whether defendants were charged with capital murder and ultimately convicted of capital murder. General Accounting Office (1990) 'Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities', *US Government of Accountability Office*, GCD-90-57. Gary Kleck found that in the Southern states, racial bias still fed into outcome, and that a hierarchy of victims existed, with 'black on white' crimes attracting more capital convictions. While Kleck

It is therefore possible to isolate the factors which have led to the retention of the death penalty in the US. The importance of states' rights and federalism has tempered any wholesale reform. Likewise, the legacy and contemporary fact of racism has acted as a bulwark to retention. Finally, the grounding of the issue in the Supreme Court has acted to slow momentum from the abolitionist movement by dissipating the moral force and entangling the issue in legalism.

Part Two

Women and the Death Penalty

This section examines the death penalty as a gendered punishment. The cultural significance of the condemned woman is explored, as is the way in which the death penalty was specifically gendered according to the creation of gender-specific capital crimes and gendered methods of execution. The differential imposition of capital punishment by gender is also explored, through the historical incidence of capital punishment for women and the current research and debate on the issue in the US.

Voyeurism and the Condemned Woman

Women condemned to death have held an enduring fascination for many writers, and a significant literature on women and the death penalty exists within fiction, fictionalised accounts of particular cases and 'true crime'. There is an often erotic fixation associated with the execution of women, and there are frequent undercurrents of voyeurism evident in the descriptions of such women. Martin Wiener noted that the stereotype of idealised femininity in the nineteenth-century had the effect of shifting intense interest to the lives of condemned women, sparking frenzied press reporting about their dress and demeanour and inciting morbid interest among the public.[81] Judith Knelman writes that 'The newspapers

---

said that much of this was rationalised by legally relevant factors, this should not obscure the institutional racial bias which crafted statutes and procedures. Gary Kleck (1981) 'Racial Discrimination in Criminal Sentencing: A Critical Evaluation of the Evidence with Additional Evidence on the Death Penalty', *American Sociological Review* 46(6), 783-805. Further research which demonstrates the racial bias according to victim is available in Marian R Williams and Jefferson E Holcomb (2001) 'Racial Disparity and Death Sentences in Ohio,' *Journal of Criminal Justice*, 29(3), 207-218; Scott Phillips (2012) 'Continued Racial Disparities in the Capital of Capital Punishment: The Rosenthal Era, *Houston Law Review*, 50(1), 131.

[81] Martin Wiener, *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England* (Cambridge University Press 2004).

all but wolf-whistled over Maria Manning's final appearance in a black satin gown.'[82] Thomas Hardy, who explored the issue of women condemned to death in his novels *Tess of the D'Urbervilles* and *Adam Bede*, was fascinated by the memory of seeing Elizabeth Martha Brown hanged for the murder of her husband in 1856.[83] Likewise, Hardy compiled detailed notes on the 1705 execution of Mary Channing, from contemporary accounts of the event. Hardy painted a vivid picture of Channing as a 'thoughtless, pleasure-loving creature,' with a litany of past lovers, and alluded to those 'other curious details which cannot be printed here.'[84] Hardy recorded these only in his personal writings, in which he described how Channing, who had recently given birth, was roused from the insensibility of strangulation by the burning of her flesh which caused her lactating breasts to begin leaking profusely.[85] In his essay, *Lying Awake*, Charles Dickens too recalled Maria Manning's 'fine shape, so elaborately corseted and artfully dressed, that it was quite unchanged in its trim appearance as it slowly swung from side to side.'[86] Dickens, like Hardy, was apparently somewhat abashed by his macabre curiosity and attraction to the topic and images of execution. As Potter, channelling Oscar Wilde, concludes, 'To attend one execution might be put down to experience, to attend four looks like voyeurism.'[87]

The vogue for gothic horror has continued in the dramatised non-fiction writings of contemporary authors seeking to reimagine historical crimes through careful re-examination of contemporary sources.[88] Prurient interest inevitably accompanies the cases of women who kill and there have been many populist texts which provide often exhaustively graphic accounts of the crimes, trials and deaths of notorious women; writings which aspire less to literary pretensions than to shocking detail. This has held true both historically,[89] and remains the case today, evident in the current true crime trend.[90]

---

[82] Judith Knelman, *Twisting in the Wind: The Murderess and the English Press* (University of Toronto Press 1998) at 262. Maria Manning and her husband Frederick Manning were executed in 1849 for the murder of Patrick O'Connor.
[83] Harold Orel, *The Unknown Thomas Hardy: Lesser-known Aspects of Hardy's Life and Career* (Harvester 1987).
[84] Thomas Hardy *The Times* (9 October 1908).
[85] Harold Orel, *The Unknown Thomas Hardy: Lesser-known Aspects of Hardy's Life and Career* (Harvester 1987).
[86] Charles Dickens (30 October 1852) 'Lying Awake', *Household Words*, No.136, 145.
[87] Harry Potter, *Hanging in Judgment: Religion and the Death Penalty in England from the Bloody Code to Abolition* (SCM 1993) at 70.
[88] Kate Summerscale, *The Suspicions of Mr Whicher: The Murder at Road Hill House* (Bloomsbury 2011); Hannah Kent, *Burial Rites* (Picador 2013).
[89] Robert Huish, *The Progress of Crime, or, The Authentic Memoirs of Maria Manning* (Lightning Source 1849/2010).

The interest has not been confined to literature; Barbara Graham, who was executed in California in 1955, became iconic when Susan Hayward won an Oscar for her portrayal of Graham in the 1958 movie, *I Want to Live*.[91] Nick Broomfield's series of documentaries on Aileen Wuornos, executed in Florida in 2002, and branded as America's first female serial killer, is also evidence of heightened interest in the offending behaviour and punishment of women.[92] The Oscar-winning biopic *Monster* continued this interest in Wuornos's case.[93] Fictionalised accounts such as *Yield to the Night* and *Last Dance* offer a glamourised and sexualised representation of women sentenced to death.[94] It is possible to discern, therefore, a level of voyeurism directed towards condemned women.

Women and the Death Penalty: A Differential Punishment

Capital punishment has historically been a punishment that was explicitly gendered in both the creation of capital statutes and in the differential execution methods for women. Throughout history, differential execution methods for women have prevailed, such as burial alive, the traditional Roman method of death for Vestal Virgins, and the use of burial under ice for Germanic tribes in the early Middle Ages to execute unwed pregnant young women. In France in the Middle Ages the practice was to drown unfaithful wives in the marshes, while women convicted of handling stolen goods could be buried alive at the foot of the gallows.[95]

Differential methods of executions based on considerations of decency prevailed until the late eighteenth-century.[96] As late as 1888, a report from New York cited the indecency of

---

[90] See for example, Beverly Lowry's story of Karla Faye Tucker, executed in February 1998, *Crossed Over: A Murder, a Memoir* (Vintage 2002) or Jerry Bledsoe's *Death Sentence: The True Story of Velma Barfield's Life, Crimes and Execution* (EP Dutton 1998). However, Marie Fox has remarked on an emergent True Crime sub-genre underpinned by a feminist approach which argues for law reform and the inclusion of contextual factors and an understanding of societal response, in 'Crime and Punishment: Representations of Female Killers in Law and Literature', in John Morison and Christine Bell, eds, *Tall Stories? Reading Law and Literature* (Dartmouth 1996).

[91] Graham was executed in 1955 for the murder of Mabel Monohan, she was linked to a Los Angeles crime gang and was presented as a bombshell moll and gang leader, see Marlin Shipman, *'The Penalty is Death': US Newspaper Coverage of Women's Executions* (University of Missouri Press 2002).

[92] *Aileen Wuornos: The Selling of a Serial Killer* (Channel 4 Television Corporation and Lafayette Films United States 1994); *Aileen: Life and Death of a Serial Killer* (Lafayette Films United States 2003).

[93] *Monster* (Media 8 Entertainment and DEJ Productions United States 2003).

[94] *Yield to the Night* (Kenwood Productions United Kingdom 1956); *Last Dance* (Touchstone Pictures United States 1996).

[95] Camille Naish, *Death comes to the Maiden: Sex and Execution, 1431-1933* (Routledge 1991).

[96] Camille Naish, *Death Comes to the Maiden: Sex and Execution, 1431-1933* (Routledge 1991); Harry Potter, *Hanging in Judgment: Religion and the Death Penalty in England* (SCM 1993). Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000).

hanging as a method of execution for women.[97] Differential methods of execution according to gender were predicated on the need to preserve decency, although this official reasoning has been disputed by some. Bernard O'Donnell, for example, has argued that the alternative of burning is hardly a more decent end than hanging.[98] It is notable that the preferred method of execution for women, burning at the stake, was also the preferred death for heretical offenders in the preceding centuries in England.[99] The burning of women at the stake was outlawed in 1790.[100] However, more modern technologies of death have also been targeted as inappropriate for women. Judy Buenoano was executed in Florida in March 1998 for the murder of her husband; in her second appeal, evidence had been introduced that women had lower pain thresholds which made electrocution a particularly cruel execution method for a woman.[101]

Even the roster of capital offences was gendered. For example, adultery was, for a time, a capital offence for women, but not for men.[102] Such statutes spoke of the fear of illegitimacy and of women as property. The term of *petit treason* applied to those murders considered particularly threatening to the fabric of society. This term covered the murder of a master by a servant, of an ecclesiastical superior by their inferior, and applied also to the murder of a husband by his wife. *Petit treason* was a specific offence, flowing from the 1351 Treason Act,[103] until its repeal in 1828.[104] Knelman writes that 'Well into the

[97] New York State Commission on Capital Punishment, *Report of the Commission to Investigate and Report the Most Humane and Practical Methods of Carrying into Effect the Sentence of Death*, in David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Oxford University Press 2010) at 118.
[98] Bernard O'Donnell, *Should Women Hang?* (WH Allen 1956).
[99] Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000).
[100] The last woman to meet this fate had been convicted of coining and was executed in 1789, see Harry Potter, *Hanging in Judgment: Religion and the Death Penalty in England from the Bloody Code to Abolition* (SCM 1993).
[101] Marlin Shipman, *'The Penalty is Death': US Newspaper Coverage of Women's Executions* (University of Missouri Press 2002).
[102] In the seventeenth-century, adultery became a capital offence which could be applied to married women through the 'Act for suppressing the detestable sins of Incest, Adultery and Fornication' of 1650. Although the crime was seldom prosecuted, its presence is indicative of the opprobrium shown towards such women, see Karlene Faith, *Unruly Women: The Politics of Confinement and Resistance* (Seven Stories Press 1993/2011); Bernard O'Donnell, *Should Women Hang?*(WH Allen 1956). The repeal of this statute has sometimes disguised the continued use of evidence of infidelity as the marker of an 'evil' woman, as knowledge of a married woman's adultery often led to a harsher criminal justice response. The English case of Edith Thompson, who was executed in 1923, is illustrative. Thompson's lover, Freddie Bywaters, had killed her husband. Letters from Thompson to Bywaters were used as evidence of her complicity, and it has been suggested that Thompson was 'hanged for adultery as much as for murder.' See Harry Potter, *Hanging in Judgment: Religion and the Death Penalty in England from the Bloody Code to Abolition* (SCM 1993) at 121. See also Lizzie Seal, *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory* (Routledge 2014).
[103] This was extended to Ireland in 1495.

nineteenth century, women convicted of petty treason were still being dragged to the scaffold in a hurdle, a wooden frame traditionally used for traitors'.[105] The offence flowed naturally from ideas of the '*feme covert*' and coverture, the legal doctrine by which a woman's legal existence was suspended on her marriage.[106] The murder of a husband by his wife 'was an affront to hierarchical male authority as the foundation of the State and social order,'[107] and was punishable by burning at the stake, the traditional form of death for female traitors. This was thought more seemly than the alternative of being hanged, drawn and quartered.[108] Shelley Gavigan argues that *petit treason* was 'the logical extension and consistent expression of women's unequal position in marriage and subordinate status more generally,'[109] arguing further that the gap between the position of a wife and that of a paid servant, was 'essentially a nominal one.'[110]

The removal of infanticide from the roster of capital offences in the twentieth-century is also illustrative of the gendered nature of capital punishment; decades before the specific creation of an infanticide offence, the courts were reluctant to condemn such women.[111] This legal development is explored in greater detail in the previous chapter.

Women and the Death Penalty: An Inappropriate Punishment

A gendered analysis also demonstrates that capital punishment came to be considered as an inappropriate punishment for women. The question of whether women were fitting subjects for capital punishment has recurred with some frequency. The gendering of capital punishment in this way has been reflected in the disproportionately low numbers of women executed as 'The execution or capital sentencing of a woman is not merely a rare event; it

---

[104] Abolished in Great Britain and Ireland by the Offences Against the Person Act 1828.
[105] Judith Knelman, *Twisting in the Wind: The Murderess and the English Press* (University of Toronto Press 1998) at 88.
[106] William Blackstone, *Commentaries on the Laws of England, Volume 1* (University of Chicago Press 2002).
[107] Karlene Faith, *Unruly Women: The Politics of Confinement and Resistance* (Seven Stories Press 1993/2011) at 32.
[108] Shelley AM Gavigan (1989/1990) 'Petit Treason in Eighteenth Century England: Women's Inequality Before the Law', *Canadian Journal of Women and the Law*, 3, 335; Karlene Faith, *Unruly Women: The Politics of Confinement and Resistance* (Seven Stories Press 1993/2011).
[109] Shelley AM Gavigan (1989/1990) 'Petit Treason in Eighteenth Century England: Women's Inequality Before the Law', *Canadian Journal of Women and the Law*, 3, 335, at 336.
[110] ibid at 338.
[111] The last woman to be executed in Britain or Ireland for infanticide occurred in England in 1849. Hilary Marland, 'Getting Away with Murder? Puerperal Insanity, Infanticide and the Defence Plea,' in Mark Jackson, ed, *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000* (Ashgate 2002).

is an anomalous one as well. There are deep cultural inhibitions against the deliberate killing of women'.[112]

JM Beattie, for example, examined records for the county of Surrey between 1660 and 1800, finding that 'Fewer women were found guilty than men, and they were also more likely to escape execution'.[113] Both juries and judges were willing to extend greater leniency to women than to men, evidenced by convictions for lesser offences, and more acquittals and reprieves.

Annulla Linders and Alana van Gundy-Yoder argue that since the nineteenth-century especially, with the advent of the 'separate spheres' doctrine, the conundrum of executing women had become more pressing.[114] The coincidence in this period of abolitionism with the First Wave of the Women's Movement saw the introduction of middle- and upper-class women's voices to the debate on the death penalty, with particular relevance to condemned women.[115] However, Linders and Gundy-Yoder suggest that the Victorian 'master narrative' of the 'good' versus the 'bad' women, paradoxically meant that condemned women were excluded from the protected category of ideal womanhood and actually served to reinforce normative ideas of femininity instead.[116] This exclusion was further compounded by the social class of many condemned women; Anette Ballinger's research from 1900 to 1955 in England and Wales found that women sentenced to death were more likely to be working-class.[117]

Under a gender binary which characterised women as weak, virtuous and inferior, the execution of women became problematic. The traditional argument against capital punishment for women had been that woman was 'less than fully human, childlike, dependent, weak, and less capable than men of responsibility'.[118] This leniency for women *qua* women estimated the person of a woman as less than that of a man, rendering 'rather a

[112] Elizabeth Rapaport (1990) 'Some Questions About Gender and the Death Penalty', *Golden Gate University Law Review*, 20(3), 501-565, at 503.
[113] JM Beattie, *Crime and the Courts in England, 1660-1800* (Clarendon Press 1986) at 453.
[114] Annulla Linders and Alana van Gundy-Yoder (2008) 'Gall, Gallantry and the Gallows: Capital Punishment and the Social Construction of Gender 1840-1920', *Gender and Society*, 22(3), 324-348.
[115] Judith Knelman, *Twisting in the Wind: The Murderess and the English Press* (University of Toronto Press 1998).
[116] Annulla Linders and Alana van Gundy-Yoder (2008) 'Gall, Gallantry and the Gallows: Capital Punishment and the Social Construction of Gender 1840-1920', *Gender and Society*, 22(3), 324-348.
[117] Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000).
[118] Annulla Linders and Alana van Gundy-Yoder (2008) 'Gall, Gallantry and the Gallows: Capital Punishment and the Social Construction of Gender 1840-1920', *Gender and Society*, 22(3), 324-348, at 332.

back-handed sort of compliment to men.'[119] The suffragists had proposed an alternative and less paternalistic rationale for women's exemption from the death penalty, arguing that a woman should not be condemned to death by laws she had no part in making.[120]

The belief that capital punishment was not an appropriate penalty for women persisted into the twentieth-century. In Britain, Home Secretaries used a framework of prior cases to guide decision-making, which effectively created women as a category which would more readily be reprieved, as precedent worked to cement gender differences. In the 50 years from 1900 to 1949, 1,210 persons were sentenced to death in England and Wales; 90.8 per cent of women and 40.3 per cent of men had their sentence of death commuted.[121] However, Ballinger cautions researchers to look beyond the surface of such figures. Although a bare look at these statistics would suggest that mercy was the watchword for the female condemned, Ballinger found that the breakdown of the figures revealed an alternative truth. Removing those cases of women who had killed children, it became clear that women who had killed an adult were *less* likely than men to have their sentence commuted.[122] This belies intuitive assumptions regarding the operation of 'chivalry' in the criminal justice system.

James B Christophe writes that, 'Irrational as it may seem, the hanging of a woman arouses different passions than the case of a man.'[123] Christophe's remark related to the notorious 1955 execution of Ruth Ellis. Lizzie Seal's analysis of the letters written to the Home Secretary on behalf of Ruth Ellis, demonstrate a narrative in which 'shared experiences in relation to motherhood and romantic love were important'.[124] This subtle feminist approach to the execution of Ellis could be considered a continuation of the opposition to the execution of women by the nineteenth-century Women's Movement.

---

[119] Camille Naish, *Death Comes to the Maiden: Sex and Execution, 1431-1933* (Routledge 1991) at 6.
[120] Annulla Linders and Alana van Gundy-Yoder (2008) 'Gall, Gallantry and the Gallows: Capital Punishment and the Social Construction of Gender 1840-1920', *Gender and Society*, 22(3), 324-348, at 339.
[121] Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000).
[122] Of 1,011 men who were not later reprieved, declared insane or who did not die before sentence, only 39 per cent, 621, were executed. Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000).
[123] James B Christophe, *Capital Punishment and British Politics: The British Movement to Abolish the Death Penalty, 1945 to 1957* (Allen & Unwin 1962) at 107.
[124] Lizzie Seal (2011) 'Ruth Ellis and Public Contestation of the Death Penalty', *Howard Journal of Criminal Justice*, 50(5), 492-504, at 501.

The characterisation of capital punishment as an inappropriate penalty for women is grounded in chivalry and in notions of paternalism. Beattie questions whether there was a chivalric explanation for the seemingly greater leniency shown to women in his sample, doubting the extent to which chivalry would have extended to the 'labouring poor':

> [A]ny embarrassment they might have felt did not prevent men in the eighteenth century from burning women at the stake for treason (including the murder of their husbands), nor from stripping them to the waist and whipping them through the streets.[125]

Notwithstanding the complexity of the concept of chivalry, illustrated by the incorporation of intersectional enquiry, the legal responses developed to save women from execution remain tinged with paternalism. For example, analysis of thousands of trials in England revealed a greater tendency to accept a plea of insanity in cases of women than men.[126] Jill Newton Ainsley concludes that while the greater willingness to encompass the crimes of women within understandings of insanity saved many women from the gallows, it perpetrated the pathologisation of women who kill, outlined in the previous chapter.

As outlined above, from the late nineteenth-century, through to the mid-twentieth century, a succession of Western countries abolished capital punishment. The final women to be executed in this wave of abolition occurred in 1925 in Ireland;[127] 1955 in England and Wales;[128] 1953 in Canada;[129] 1951 in Australia;[130] 1923 in Scotland;[131] and in New Zealand in 1895 where 'baby-farmer' Minnie Dean was the only woman ever executed.[132] However, the question of women and the death penalty has not become academic. In the United States the continued execution of women since the reintroduction of capital punishment in 1976, represents the 'modern era' of the death penalty.

---

[125] JM Beattie, *Crime and the Courts in England, 1660-1800* (Clarendon Press 1986) at 439.
[126] Jill Newton Ainsley (2000) '"Some Mysterious Agency": Women, Violent Crime and the Insanity Acquittal in the Victorian Courtroom', *Canadian Journal of History*, 35(1), 37-55.
[127] The case of Annie Walsh, executed in Mountjoy Prison in 1925 for the murder of her husband. This case is examined in later chapters.
[128] Ruth Ellis, executed in 1955 for the murder of her partner David Blakeley.
[129] F Murray Greenwood and Beverley Boissery, *Uncertain Justice: Canadian Women and Capital Punishment, 1754-1953* (Dundurn 2000).
[130] Paul R Wilson, *Jean Lee: The Last Woman Hanged in Australia* (Random House Australia 1997).
[131] Donald M Fraser, *The Book of Glasgow Murders* (Neil Wilson Publishing 2009).
[132] Lynley Hood, *Minnie Dean: Her Life and Crimes* (Penguin 1995). Baby-farming was a practice whereby unwanted infants or children would be placed, for a small sum of money, in the homes of persons who made their living by taking care of such children. Conditions varied in these homes and the children were often subject to mistreatment and cruelty, often resulting in their death.

Women and the Death Penalty in the US: A Contemporary Case

The United States provides an opportunity to explore how gender interacts with capital punishment in a modern context. Since the reintroduction of the death penalty in 1976, 15 women have been executed. Ann Jones, writing about the 'purge' of women executed since the reintroduction of capital statutes in 1976, cites the execution of Velma Barfield in 1984 as the first in a 'contagion of killing.'[133] The most recent executions of women on death row were those of Suzanne Basso and Lisa Coleman in 2014 and Kelly Gissendaner in 2015.[134] For those women executed, Jones describes:

> [A] catalogue of childhood neglect, abuse, rape, incest, assault, exploitation, alcohol, drugs (illegal or prescribed), traumatic head injury, brain dysfunction, mental retardation, poverty, minimal education, abandonment, loss, shame, shattered hope, attempted suicide, and scarcely a single solid human relationship along the way. There are things terribly askew in every one of these lives, just as there are in the lives of so many men who wind up on death row. They are put to death not because they are the most dangerous people – they could be held in prison, which some women find safer and more supportive than life outside – but because they are literally defenceless in the face of state-sponsored violence.[135]

Victor L Streib, writing in 1997, argued that although capital statutes were ostensibly gender-neutral, when politicians clamoured for the execution of a condemned person, this person was explicitly or implicitly a man. Streib argued that there was less 'mileage' in calling for the execution of women, something he termed 'America's aversion'.[136] Miller writes that this 'aversion' was dispelled in the 1998 execution of Karla Faye Tucker which

---

[133] Ann Jones, *Women Who Kill* (Feminist Press 2009) at 18.
[134] Death Penalty Information Centre <http://www.deathpenaltyinfo.org/women-and-death-penalty#executed> accessed 18 January 2016. For a summary of 14 women executed since the re-introduction of the death penalty in 1976 see Mary Welek Atwell, *Wretched Sisters: Examining Gender and Capital Punishment* (2nd ed, Peter Lang 2014).
[135] Ann Jones, *Women Who Kill* (Feminist Press 2009) at 19.
[136] Victor L Streib (1997) 'America's Aversion to Executing Women', *Women's Law Journal*, 1, 1-8. This aversion was notably demonstrated in the 1941 case of Eithel Spinelli, the first women to be put to death by gas chamber in the US; Spinelli was a Los Angeles gang leader who became the subject of a petition of the male inmates of San Quentin prison who appealed for her commutation and offered to take her place, see Vivien Miller (2004) '"The last vestige of institutionalized sexism?" Paternalism, Equal Rights and the Death Penalty in Twentieth and Twenty-First Century Sunbelt America: The Case for Florida', *Journal of American Studies*, 38(3), 391-424.

explicitly presented an 'equal rights' death penalty.[137] Since then, the proportion of women executed in the US has increased; Streib acknowledged that while the lull in women executed between 1973 and 1997 seems to have been atypical, the practice remains 'rare and inconsistent.'[138] Streib identifies a process which occurred throughout the criminal justice system by which the numbers of women at all stages were increasingly whittled away to create considerable disparity in the numbers of men and women executed.[139] Almost 45 per cent of men on death row are executed, compared to 16 per cent of female death row inmates.[140] In the US therefore, women are less likely than men to be capitally convicted and less likely than men to be executed.

A Discriminatory Penalty

In light of these figures, it is no wonder that capital punishment in the US is described as a male phenomenon.[141] This disparity has led Andrea Shapiro to call for an equal protection challenge under the Fourteenth Amendment, on the basis that there is purposeful and knowing discrimination in favour of women.[142] This discrimination was raised by Justice Thurgood Marshall in *Furman v Georgia* as just one in a list of fundamental injustices inherent in the application of the penalty.[143] Justice Marshall cited:

> [O]verwhelming evidence that the death penalty is employed against men and not women. Only 32 women have been executed since 1930, while 3,827 men have met a similar fate. It is difficult to understand why women have received

[137] Vivien Miller (2004) '"The last vestige of institutionalized sexism?" Paternalism, Equal Rights and the Death Penalty in Twentieth and Twenty-First Century Sunbelt America: The Case for Florida', *Journal of American Studies*, 38(3), 391-424.
[138] Victor L Streib (2002) 'Rare and Inconsistent: The Death Penalty for Women', *Fordham Urban Law Journal*, 33(2), 609-636. Between 1973 and 1997, 0.2 per cent of persons executed were women. Between 1998 and 2011, 1.3 per cent of persons executed were women. In 2011, women accounted for 6.4 per cent all persons executed, the highest proportion in any year since 1973.
[139] Recent figures demonstrate that women comprised 10 per cent of all arrests for murder annually, but represented only 2.1 per cent of persons sentenced to death, just 1.8 per cent of persons on death row and only 0.9 per cent of persons executed since 1973. Victor L Streib (2012) 'Death Penalty for Female Offenders, January 1, 1973, through December 31, 2011', Issue 66 (Death Penalty Information Center).
[140] Jessica Salvucci (2011) 'Femininity and the Electric Chair: An Equal Protection Challenge to Texas', *Boston College Third World Journal*, 31(2), 405-437.
[141] Mark D Cunningham and Mark P Vigen (2002) 'Death Row Inmate Characteristics, Adjustment and Confinement: A Critical Review of the Literature', *Behavioral Sciences and the Law*, 20(1/2), 191-210.
[142] Andrea Shapiro (2000) 'Unequal Before the Law: Men, Women and the Death Penalty', *Journal of Gender, Social Policy and the Law*, 8(2), 428-470.
[143] *Furman v Georgia*, 408 US 238 (1972).

> such favoured treatment, since the purposes allegedly served by capital punishment seemingly are equally applicable to both sexes.[144]

Both the Eighth and the Fourteenth Amendments to the Constitution, relating to equal protection and cruel and unusual punishment, prohibit the differential application of the death penalty according to factors such as gender or race.[145] However, in the 1987 Supreme Court case of *McCleskey v Kemp*,[146] statistical evidence was presented that demonstrated discrimination based on race. The Supreme Court rejected this, citing a slippery slope argument, and holding that the incorporation of 'irrelevant' factors, without evidence of specific discrimination in that particular case, would throw the door open to challenges based on any number of factors, including gender.[147] This line of thought was taken in subsequent challenges based on discrimination according to gender, which have thus far been unsuccessful.[148]

However, what Jessica Salvucci calls 'facial equality' cannot mask the differential results of supposedly gender-neutral statutes.[149] In a study of two centuries of the death penalty in Ohio, Streib found that despite no official articulation of intended gender differences, there was 'a subtle and unspoken bias',[150] which led to greater leniency being shown towards women; this leniency was 'implied and cultural rather than express and legal.'[151] Steven F

---

[144] Justice Thurgood Marshall, *Furman v Georgia*, 408 US 238 (1972).
[145] Jenny E Carroll (1997) 'Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice', *Texas law Review*, 75(6), 1413-1453; Jessica Salvucci (2011) 'Femininity and the Electric Chair: An Equal Protection Challenge to Texas', *Boston College Third World Journal*, 31(2), 405-437.
[146] *McCleskey v Kemp*, 481, US 279 (1987).
[147] Andrea Shapiro (2000) 'Unequal Before the Law: Men, Women and the Death Penalty', *Journal of Gender, Social Policy and the Law*, 8(2), 428-470.
[148] Andrea Shapiro outlined the arguments in *Arizona v White* 815 P.2d 869 (Ariz. 1991) in which a man and woman convicted of the same murder received the differential penalties of a death sentence and a sentence of life imprisonment respectively. However, the Court in *White* held that equality of treatment did not preclude the consideration of individual factors; in *White* the male actor had actually perpetrated the killing, an aggravating factor, while the female actor was afforded the mitigating factor of her motherhood and the effect her execution would have on her daughter, see Andrea Shapiro (2000) 'Unequal Before the Law: Men, Women and the Death Penalty', *Journal of Gender, Social Policy and the Law*, 8(2), 428-470. This was also the argument of Paul Joe Carasi before the California Supreme Court, in *People v Carasi* 190 P.3d 616, 622 (Cal. 2008). Carasi had been sentenced to death for murder while his girlfriend, Donna Lee who had also been convicted of murder, was sentenced to life imprisonment. This explicit claim of gender bias was dismissed in the Supreme Court which held that Carasi had offered a culturally generalised argument, but had provided no evidence of unfairness in his particular case, see Steven F Shatz and Naomi R Shatz (2012) 'Chivalry is Not Dead: Murder, Gender, and the Death Penalty', *Berkeley Journal of Gender, Law and Justice*, 27(1), 64-112.
[149] Jessica Salvucci (2011) 'Femininity and the Electric Chair: An Equal Protection Challenge to Texas', *Boston College Third World Journal*, 31(2), 405-437.
[150] Victor L Streib, *The Fairer Death: Executing Women in Ohio* (Ohio University Press 2006) at 132.
[151] ibid at 133.

Shatz and Naomi R Shatz also found evidence of chivalry in their study of 1,299 murder cases in California. They found that women were less likely than men to be sentenced to death and that this disparity could be explained by reference to chivalry.[152] The premise that women are disproportionately shielded from capital punishment is examined below by reference to the contested and complex concept of 'chivalry'.

Going Beyond Chivalry

The differential numbers of men and women executed in the US has been understood by some both as a consequence of culpability-assessment and of how aggravating and mitigating factors are considered at the sentencing stage. The manner in which degrees of culpability are quantified sees capital convictions most commonly handed down in predatory murder cases; murder in the furtherance of another felony; murder committed beyond the perpetrator's immediate family; and, murders committed for personal gain.[153] Women commit a much smaller proportion of these aggravated murders.[154] Of relevance also, is the weight afforded to a defendant's criminal record, history of violence and the brutality of the murder. This has led Elizabeth Rapaport to claim that gender disparity in executions derives from notions of a hierarchy of reprehensibility, rather than notions of chivalry.[155] While aggravating factors are typically delimited by lists, the information which can be submitted in mitigation of an offence is usually left open.[156] For women, this often refers to the role as a good wife or good mother, and also provides ripe opportunity for evidence of emotional or mental disturbance.

---

[152] Steven F Shatz and Naomi R Shatz (2012) 'Chivalry is Not Dead: Murder, Gender, and the Death Penalty', *Berkeley Journal of Gender, Law and Justice*, 27(1), 64-112.

[153] Jessica Salvucci (2011) 'Femininity and the Electric Chair: An Equal Protection Challenge to Texas', *Boston College Third World Journal*, 31(2), 405-437.

[154] Elizabeth Rapaport, (1991) 'The Death Penalty and Gender Discrimination' *Law and Society Review*, 25(2), 367-384.

[155] The presumption that women are treated more leniently when they kill, evident in the general unwillingness to treat domestic murders as harshly as 'stranger murder', the 'domestic discount', has been described as a myth by Elizabeth Rapaport, who argues that this is merely symptomatic of a larger trend in which male authority was absolute in his domestic, private life, which created a hierarchy whereby murders committed outside the home were considered more serious, while murders perpetrated within the family were considered a private matter. Elizabeth Rapaport concludes that this 'hierarchy of opprobrium is chivalrous to women as perpetrators… but it is not chivalrous to women as victims.' See, Elizabeth Rapaport (1990) 'Some Questions About Gender and the Death Penalty', *Golden Gate University Law Review*, 20(3), 501-565, at 559. See also Elizabeth Rapaport (1995) 'Capital Murder and the Domestic Discount: A Study of Capital Domestic Murder in the Post-*Furman* Era', *Southern Methodist University Law Review*, 49(5), 1508-1546.

[156] Jessica Salvucci (2011) 'Femininity and the Electric Chair: An Equal Protection Challenge to Texas', *Boston College Third World Journal*, 31(2), 405-437.

Incorporating the concept of intersectionality also complicates the theory that chivalry operates to save women from execution. Chivalry is more often granted to women who fall within the scope of 'ideal womanhood', meaning white, middle-class, heterosexual women. Viewing chivalry through this lens, we can see that it is vastly more complex than a blanket claim that women are treated more leniently by virtue of their sex.[157]

Mary Welek Atwell's study of 11 women executed in the modern death penalty era cites the negative consequences of chivalry for women who cannot conform to this ideal of femininity.[158] Her research suggested that 'evil and unfit mothers' and women who were unfaithful to partners could forfeit the chivalry dividend. Lesbian women too are over-represented among condemned women in the US; the 'homo-sexualized' depiction of lesbians as aggressive, vengeful and man-hating may act as an aggravating feature in sentencing.[159] The denial of chivalry to women who are understood as masculine was also evident in the case of Aileen Wuornos;[160] Kyra Pearson links the demonisation of Wuornos to her perceived deviation from 'heteronormative domesticity'.[161] Pearson argues that Wuornos could not be accommodated within this standard and was read as 'male'. This interplay of factors was again evident in the 1998 case of Karla Faye Tucker. Joan W Howarth has argued that rather than the murders themselves, it was Tucker's deviant and masculine sexuality which made her abject.[162] However, Tucker was also 'white, eloquent and attractive',[163] all factors that contributed to the intense publicity around her case.[164] In contrast, Karen Beckman compares Tucker's case to the case of Judi Buenoano, executed in Florida one month after Tucker, whose impending death went unmarked by most.[165]

---

[157] Annulla Linders and Alana Van Gundy-Yoder (2008) 'Gall, Gallantry, and the Gallows: Capital Punishment and the Social Construction of Gender, 1840-1920', *Gender and Society*, 22(3), 324-348.
[158] Mary Welek Atwell, *Wretched Sisters: Examining Gender and Capital Punishment* (2nd ed, Peter Lang 2014).
[159] Kathryn Ann Farr (2000) 'Defeminizing and Dehumanizing Female Murderers: Depictions of Lesbians on Death Row', *Women and Criminal Justice*, 11(1) 49-66.
[160] Aileen Wuornos was convicted of the murder of seven men in Florida and was executed in 2002.
[161] Kyra Pearson (2007) 'The Trouble with Aileen Wuornos: Feminism's "First Serial Killer"', *Communication and Critical/Cultural Studies*, 4(3), 256-275.
[162] Joan W Howarth (1992) 'Feminism, Lawyering and Death Row', *Southern California Review of Law and Women's Studies*, 2(1), 401-426.
[163] Jessica Salvucci (2011) 'Femininity and the Electric Chair: An Equal Protection Challenge to Texas', *Boston College Third World Journal*, 31(2), 405-437 at 421.
[164] Karen Beckman (2004) 'Dead Woman Glowing: Karla Faye Tucker and the Aesthetics of Death Row Photography', *Camera Obscura*, 19(55), 1-42.
[165] ibid.

The ethnicity of women on death row is also instrumental in their construction. For example, in a comparison between the cases of the African-American and lesbian Wanda Jean Allen, and the white, heterosexual Karla Faye Tucker, Cooey argues that while both women converted to evangelical Christianity following their sentencing, the Christian Right only pledged full support to Tucker, demonstrating the importance of factors which interact with gender when we engage in any discussion of chivalry.[166] Streib too has emphasised the place of race in his analysis of the numbers of women executed in the US, finding that historically it was predominantly slave women who were executed.[167] Marlin Shipman also found a racialized dimension in the press reporting of the execution of African-American women; coverage of these events was sparse, and when these executions were recorded, the dialect of the women would be transcribed in interviews, a practice not extended to white Southern women, many of whom would also have had strong local dialects.[168]

Streib also notes other commonalities of women executed in the US, including poverty and lower socio-economic class.[169] Such examples highlight the importance of considerations of intersectionality, and an awareness that capital punishment comes with 'race and class

[166] Paula M Cooey (2002) 'Women's Religious Conversions on Death Row: Theorizing Religion and State', *Journal of the American Academy of Religion*, 70(4), 699-717.
[167] Victor L Streib (1990) 'Death Penalty for Women Offenders', *University of Cincinnati Law Review*, 58(3), 845-880.
[168] Marlin Shipman, *'The Penalty is Death': US Newspaper Coverage of Women's Executions* (University of Missouri Press 2000).
[169] Victor L Streib (1990) 'Death Penalty for Women Offenders', *University of Cincinnati Law Review*, 58(3), 845-880. Both Shipman, and Greenwood and Boissery, find some evidence of the 'Othering' of Irish emigrant women in North America. Shipman writes that press reporting of the executions of Irish women depicted them as animalistic and as lower on a developmental scale than women of other nationalities. Greenwood and Boissery, writing in a Canadian context, cite the case of Eleanor Power in Newfoundland in 1754. Power was executed for a murder in which she had played no active part; the murder had occurred following a robbery she had planned. Power and the other conspirators were Irish, an identified 'problem population' in the territory, viewed as subversive and uncontrollable and therefore the fitting subjects of a harsher criminal justice response. F Murray Greenwood and Beverley Boissery, *Uncertain Justice: Canadian Women and Capital Punishment, 1754-1953* (Dundurn 2000); Marlin Shipman, *'The Penalty is Death': US Newspaper Coverage of Women's Executions* (University of Missouri Press 2000). The interplay of class was also cited in the case from Victorian England of Christiana Edmunds, dubbed the 'Brighton Poisoner'. Edmunds had been convicted of the murder of Sydney Barker who died in June 1871; her death sentence was subsequently commuted on the grounds of insanity. Jill Newton Ainsley argues that Edmunds's 'lady-like' middle-class background made exculpation possible in this case. Jill Newton Ainsley (2000) '"Some Mysterious Agency": Women, Violent Crime and the Insanity Acquittal in the Victorian Courtroom', *Canadian Journal of History*, 35(1), 37-55.

implications'.[170] A woman's sex does not universally reprieve or condemn: rather, it is the interplay of a variety of factors which determines her fate.[171]

The interplay of gender and other factors as both a negative and a positive in capital sentencing has led some to propose two theories which attempt to reconcile the approach of the criminal justice system to violent female offenders. As outlined in the preceding chapter, the 'chivalry theory' seeks to explain why there are so few women capitally convicted, while the 'evil woman theory' is used to explain how some women do end up being capitally convicted and executed.[172] The chivalric element of this approach uses traditional understandings of paternalistic protection and accepts that individual women benefit from the concept of traditional femininity to ameliorate the moral culpability of the accused. Conversely, for those women who contravene traditional femininity, the protection is removed.[173] Under this binary, 'The death penalty… becomes more than a means of punishment; it becomes a means to enforce and dictate women's roles and images within society.'[174]

Rapaport argues that women do not receive preferential treatment; rather, when they have committed traditionally 'male' crimes, or stepped into the 'evil woman' realm, they are punished more harshly.[175] Analysing why *some* women face such a harsh response, Jenny E Carroll argues that for women, it is manifestation of severe levels of violence, combined with their position of marginality, which leads to capital convictions, 'women who are sentenced to death are women who exist furthest from the collective center of traditional

[170] Jenny E Carroll (1997) 'Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice', *Texas law Review*, 75(6), 1413-1453, at 1423.
[171] Anette Ballinger (2007) 'Masculinity in the Dock: Legal Responses to Male Violence and Female Retaliation in England and Wales, 1900-1965', *Social and Legal Studies* 16(4), 459-481.
[172] Jessica Salvucci (2011) 'Femininity and the Electric Chair: An Equal Protection Challenge to Texas', *Boston College Third World Journal*, 31(2), 405-437; Jenny E Carroll (1997) 'Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice', *Texas law Review*, 75(6), 1413-1453.
[173] Jessica Salvucci (2011) 'Femininity and the Electric Chair: An Equal Protection Challenge to Texas', *Boston College Third World Journal*, 31(2), 405-437.
[174] Jenny E Carroll (1997) 'Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice', *Texas law Review*, 75(6), 1413-1453, at 1429.
[175] Elizabeth Rapaport (1990) 'Some Questions About Gender and the Death Penalty', *Golden Gate University Law Review*, 20(3), 501-565, at 565.

social and female roles.'[176] She writes that capital punishment is gendered because establishing that a woman has a 'life worth saving'[177] requires adherence to traditional female roles.[178] This hurdle that women must reach before they are the recipients of chivalry has led Rapaport to conclude that 'The chivalry from which women supposedly benefit is too costly: In ideological coin it is supposed to be repaid with tacit recognition of the moral inferiority of females and our lack of aptitude for full citizenship.'[179] Under this interpretation, the chivalry experienced by women is read instead as paternalism. Carroll has expressed this as 'the tradeoff women make between full moral, social, and legal stature and certain social protections.'[180]

Conclusion

Throughout history, capital punishment has served as a punishment of last resort for many societies, its use and status varying with the political and social context. However, by the nineteenth-century the marginal but sustained abolitionist voice was becoming louder in many Western countries, leading eventually to a domino effect of abolition which crept across Europe and other Western democracies. This momentum gathered pace particularly following WWII, hastened by the work of European supranational organisations which emerged post-war. The US, however, through the interplay of nationally discrete political, historical and cultural factors, presents an example of Western exceptionalism. Debate on capital punishment in the US has been dominated by retentionist discourses since the post-*Furman* era of the 1970s.

Capital punishment is also a gendered punishment. Historically, the creation of gender-specific capital offences and gender-specific methods of execution demonstrated the differential nature of the death penalty when it was applied to women. These gender-

[176] Jenny E Carroll (1997) 'Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice', *Texas law Review,* 75(6), 1413-1453, at 1436.
[177] ibid at 1447.
[178] Jenny E Carroll (1997) 'Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice', *Texas law Review,* 75(6), 1413-1453.
[179] Elizabeth Rapaport, (1991) 'The Death Penalty and Gender Discrimination' *Law and Society Review*, 25(2), 367-384, at 368.
[180] Jenny E Carroll (1997) 'Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice', *Texas law Review,* 75(6), 1413-1453, at 1419.

specific adaptations, evident in the offence of petit treason or the fear that hanging was an immodest death for a woman, have tended to reify women's 'Othered' position in society.

The cultural significance of the condemned woman is evident too in the fascination and voyeurism associated with such cases. The cultural purchase of the condemned woman lies partly within the rarity of her status, but also within the belief that capital punishment is an inappropriate penalty for women. The inappropriateness of capital punishment as a punishment for women means that it remains a 'male' phenomenon; women are executed in disproportionately low numbers. This view manifests both in lower numbers of women being sentenced to death, and lower numbers of women being executed. Both historically and in contemporary US practice this remains the case. This differential application has been described as leniency, and has been attributed to chivalry. However, in this context chivalry operates as a complicated process, allied with paternalism premised on patriarchal ideology.[181] It is suggested that many women are denied the agency which would render them fit subjects for capital punishment, while for those women who contravene traditional feminine roles, the 'evil woman' label effectively deprives them of their humanity and monsterises them. It appears then, that despite apparent leniency, and the fact that women continue to be executed in lesser numbers than men, they continue to be judged by expectations linked to their femininity. In this manner the application of capital punishment can be said to remain a gendered phenomenon.

[181] Elizabeth F Moulds (1978) 'Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System', *Western Political Quarterly*, 31(3), 416-430.

Chapter Three

The Crimes, Punishment and Confinement of Women in Ireland

Introduction

Criminological scholarship in Ireland has a relatively short history.[1] With some exceptions, criminological research on women in Ireland has been almost entirely lacking.[2] This thesis seeks to examine the interface between women and the criminal justice system, specifically through examination of the cases of women sentenced to death post-1922. To this end, the chapter provides a review of the existing literature on the crimes, punishment and confinement of women in Ireland. The chapter overviews the literature on women's crime in Ireland, both pre- and post-1922. Within this review, the areas of homicide[3] and infanticide are considered particularly. The chapter also engages with the literature on sexuality and illegitimacy, with a focus on the place of women within the mores of Irish society.

The chapter also explores the punishment and confinement of women in Ireland. Literature on the confinement of women in both semi-penal and penal sites is included, from detention in institutions such as Magdalen laundries and psychiatric institutions, to the

[1] Criminology has been described as 'Ireland's absentee discipline,' see Mike Tomlinson and Bill Rolston, 'Spectators at the Carnival of Reaction? Analysing Political Crime in Ireland', in M Kelly, L O'Dowd and J Wickham, eds, *Power, Conflict and Inequality* (Turoe Press 1982) at 25. Ian O'Donnell suggests that criminology has progressed from 'absentee', to 'fledgling' in his article, Ian O'Donnell (2005) 'Crime and Justice in the Republic of Ireland', *European Journal of Criminology* 2(1), 99-131.

[2] Some notable exceptions include Patricia Carmody and Mel McEvoy, *A Study of Irish Female Prisoners* (Stationery Office 1996); Ciaran McCullagh, *Crime in Ireland: A Sociological Introduction* (Cork University Press 1996); Ivana Bacik, 'Women and the Criminal Justice System', in Paul O'Mahony, ed, *Criminal Justice in Ireland* (IPA 2002); Barbara Mason, 'A Gendered Irish Experiment: Grounds for Optimism,' in Frances Heidensohn, ed, *Gender and Justice: New Concepts and Approaches* (Willan 2006); Catherine O'Sullivan (2008) 'The Nun, the Rape Charge, and the Miscarriage of Justice: the Case of Nora Wall', *Northern Ireland Legal Quarterly*, 59(3), 305-326; Pauline Prior, *Murder and Madness: Gender, Crime and Mental Disorder in Nineteenth-Century Ireland* (Irish Academic Press 2008); Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011). Research on infanticide from an historical and legal perspective has also provided a rich source of information on this cohort of women who kill. See, for example, Elaine Farrell (2008) '"The Fellow Said it was No Harm and Only Tricks": The Role of the Father in Suspected Cases of Infanticide in Ireland, 1850-1900', *Journal of Social History*, 45(4), 990-1004; Elaine Farrell (2012) '"Infanticide of the Ordinary Character': An Overview of the Crime in Ireland, 1850-1900', *Irish Economic and Social History*, 39(1), 56-72; Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012); Karen M Brennan (2013) '"A Fine Mixture of Pity and Justice": The Criminal Justice Response to Infanticide in Ireland, 1922-1949', *Law and History Review*, 31(4); Karen M Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.

[3] The broad term 'homicide' is used herein to reflect the categories adopted in the literature reviewed. While this is a more expansive term than 'murder', it provides insight into women's lethal violence. Further, 'murder' will be referred to when this was the specific term within the literature.

formal criminal justice disposals of women, through imprisonment and the death penalty. Throughout, paternalistic approaches were identified in the penal processes as they were applied to women.

The Position of Women in Ireland

Understanding the position of women in Irish society necessitates engagement with the symbolic nature of Irish womanhood: 'Woman' in Ireland has been considered by some as a loaded and prescriptive status.[4] The use of gender in nationalist discourses, for example in the apotheosis of the 'Mother' as the pinnacle of Irish women,[5] has had significant ramifications for the concept of the Irish female citizen, particularly post-1922, tending to situate her firmly within the surrounds of domesticity. Louise Ryan has noted that 'women's role as "mothers of the nation" was central to the nation-building project in the newly established Free State.'[6] This concept of women as the 'embodiment' of the new nation envisioned the women of Ireland as essential in the 'strength, continuity and viability of the nation.'[7] Women became the transmitters of an Irish culture which was defined by purity and in opposition to English 'laxity'.

The role of women in Ireland was strongly influenced by the increasing power of the Catholic Church following the Famine of 1845 to 1850, and by movements such as the Gaelic revival, in which women 'became part of a corrupt transaction between nationalism and literature which feminized the national and nationalized the feminine'.[8]

New attitudes to sexuality also emerged from the 1880s, coinciding with the resurgent Catholic Church and growing nationalism; these attitudes revolved around respectability and the regulation of women and prioritised the virtues of marriage and motherhood.[9] The

[4] Geraldine Horan (2011) 'Discourses of Gender and Nationalism in Early Twentieth-Century Germany and Ireland: An Analysis of Four Nationalist Women's Texts', *Patterns of Prejudice*, 45(5), 469-497.
[5] Maryann Gialanella Valiulis (1995) 'Power, Gender and Identity in the Irish Free State', *Journal of Women's History*, 6(4) and 7(1), 117-136; Jayne Steel, '"And Behind Him a Wicked Hag Did Stalk": From Maiden to Mother, Ireland as Woman through the Male Psyche', in Louise Ryan and Margaret Ward, eds, *Irish Women and Nationalism* (Irish Academic Press 2004).
[6] Louise Ryan (2002) 'Sexualising Emigration: Discourses of Irish Female Emigration in the 1930s', *Women's Studies International Forum*, 25(1), 51-65, at 51.
[7] ibid at 51.
[8] Eavan Boland (1995) 'The Minds and Voices of Modern Irish Women', *Journal of Women's History*, 6(4) and 7(1), 6-8, 7.
[9] Dympna McLoughlin (1994) 'Women and Sexuality in Nineteenth-Century Ireland', in Alan Hayes and Diane Urquhart, eds, *The Irish Women's History Reader* (Routledge 2001).

economic imperatives ushered in by the Famine,[10] such as a new system of inheritance and reduced rates of marriage,[11] conspired to establish the ideal Irish woman as sexually passive.[12] This new propriety was driven by a rural, land-owning class which adopted the idea of marriage to mean the marriage of chaste, dowered daughters to landowning men.[13]

Post-1922, concerns about morality and sexuality heightened;[14] legislative measures were introduced to regulate and control sexual behaviour.[15] These interventions were aimed at raising the age of consent, protecting women and girls from sexual exploitation, and prohibiting the sale and advertisement of contraceptives.[16] This period of legislative concern with female sexuality culminated in the Carrigan Report of 1931. This Report represented the bedrock of social conservatism which would characterise the new State and followed close Church/State co-operation throughout the 1920s on issues such as divorce, contraception and censorship.[17] Diarmaid Ferriter concluded that the Report represented a 'milestone in the history of the Irish state legislating for sexual matters', and ensured that the focus remained on immorality.[18] The resulting Criminal Law Amendment Act 1935 represented a concerted attempt by the State to regulate the sexuality of women and girls.[19] David M Doyle has argued that this legislation epitomised the Irish paternalistic view of young women post-1922, which assumed that they should be protected from themselves.[20]

---

[10] The Famine lasted from 1845 to 1850; caused by the failure of successive potato crops, it prompted years of starvation, disease and emigration.

[11] See (n30) on the changing system of land inheritance post-Famine.

[12] Garrett notes that the long-running battles on issues such as illegitimacy, social welfare provision and legal adoption could all be traced back to the two fundamental concerns which emerged post-Famine and which persisted through much of the post-1922 period: patriarchy and land ownership. See, Paul Michael Garrett (2000) 'The Abnormal Flight: The Migration and Repatriation of Irish Unmarried Mothers,' *Social History*, 25(3), 330-343.

[13] Dympna McLoughlin (1994) 'Women and Sexuality in Nineteenth-Century Ireland', in Alan Hayes and Diane Urquhart, eds, *The Irish Women's History Reader* (Routledge 2001) 81-86; Geraldine Curtin, *The Women of Galway Jail: Female Criminality in Nineteenth-Century Ireland* (Arlen House 2001).

[14] It is also instructive to remember that the anxiety over female sexuality was not an historical phenomenon alone, and Ireland has experienced several waves of hysteria regarding the sexual habits of women, see Tom Inglis (2002) 'Sexual Transgressions and Scapegoats: A Case Study from Modern Ireland', *Sexualities*, 5(5), 5-24.

[15] Sandra McAvoy, 'The Regulation of Sexuality in the Irish Free State, 1929-1935', in Greta Jones and Elizabeth Malcolm, eds, *Medicine, Disease and the State in Ireland, 1650-1940* (Cork University Press 1999).

[16] ibid.

[17] James M Smith (2004) 'The Politics of Sexual Knowledge: The Origins of Ireland Containment Culture and Carrigan Report', *Journal of the History of Sexuality*, 13(2), 208-233.

[18] Diarmaid Ferriter, *Occasions of Sin* (Profile 2009) at 136.

[19] David M Doyle (2012) 'Reasonable Belief and Unlawful Carnal Knowledge: A Historical Perspective', *Irish Criminal Law Journal*, 47(1), 49-75.

[20] David M Doyle (2011) '"The Guilty Sexual Predator" and the "Innocent Comely Maiden": Gender, Paternalism and the Pregnancy Factor', *Irish Criminal Law Journal*, 21(2), 36-40.

Maria Luddy writes that 'the maternal body, particularly in its unmarried condition, became a central focus in the developing welfare policies of the state and the Catholic Church'.[21] The legal framework in Ireland for much of the period post-Independence created a maternity trap for women. Section 17 of the 1935 Act specifically prohibited the sale or advertisement of contraceptives, there was no legal provision for divorce or abortion, no crime of rape within marriage until the Criminal Law (Rape) (Amendment) Act 1990, and few sources of State assistance for women who left a marriage.[22] For much of the post-1922 period, economic well-being and social standing were not compatible with lone motherhood.[23] Finola Kennedy has argued that solo motherhood only became feasible in Ireland in 1973 with the Unmarried Mother's Allowance.[24] Illegitimate children were also essentially understood within the law as 'belonging' to the mother.[25] As marriage was key to understanding the concept of family, it followed that children born outside of marriage were seen as problematic, and only explicable through their mother.[26]

The legislative onslaught against women following Independence culminated in the enshrinement of domesticity as the natural state of women in the 1937 Constitution,[27] some

[21] Maria Luddy (2001) 'Moral Rescue and Unmarried Mothers in Ireland in the 1920s', *Women's Studies*, 30(6), 797-817, at 798.
[22] The Children's Allowance in 1944 was followed almost three decades later by the Deserted Wife's Allowance in 1973.
[23] Maria Luddy (2001) 'Moral Rescue and Unmarried Mothers in Ireland in the 1920s', *Women's Studies*, 30(6), 797-817
[24] Prior to the enactment of this, there were few means by which unmarried mothers could receive State assistance. An 1863 law entitled the local authority to claim expenses of the father of an illegitimate child only if the child became a drain on the public finances; there was no provision for expenses related to the need of the mother or the child. Instead, post-1922, Kennedy notes that an institutional solution was proposed; 'first offenders' could find refuge in a Mother and Baby Home while 'persistent offenders' could be placed in a Magdalen laundry. Although the Illegitimate Children (Affiliation Orders) Act 1930 provided some manner of progress, the stated reform was illusory at best. A mother could ostensibly claim financial assistance from the child's father, but her evidence had to be corroborated, which acted as a bar to most women, see Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).
[25] This is evident from various statutes regarding public assistance in which mothers were obliged to assist illegitimate infants without a corresponding obligation on the father, see for example the Public Assistance Act 1939.
[26] In addition to the lack of financial assistance for unmarried mothers for decades following Independence, the stigma of illegitimacy was also enshrined in the law. In 1983, the Supreme Court held that illegitimate children had lesser rights of inheritance than legitimate children. This was reformed in the Status of Children Act 1987 which finally removed the status of illegitimacy. See, Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).
[27] Article 41.2.1 of the Constitution states: 'In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved'. Article 41.2.2 goes on: 'The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home'. This constitutional provision perfectly encapsulates Frug's thesis that the law produces sex differences and renders them seemingly natural, in this context the female body is the maternal body, see Mary Joe Frug (1992) 'A Postmodern Feminist Manifesto (An Unfinished Draft)', *Harvard Law Review*, 105(5), 1045-1075.

of the provisions of which were 'almost indistinguishable from Nazi decrees'.[28] Ireland's post-colonial national character has been seen as a composite of the British Victorian ethos and middle-class Catholic morality;[29] and the statutes which reinforced this self-perception attempted to separate the male and female spheres of activity.

The impact of these discourses in the response to the crimes, punishment and confinement of women in Ireland will be explored below. The following sections examine the incidence of women and crime in Ireland, beginning with an historical contextualisation of women's crime generally, before a discussion of homicide and infanticide.

Women and Crime in Ireland

Women and Crime in Ireland Pre-1922

Any discussion of women's crime historically must be situated within the context of the Famine of 1845 to 1850. The Famine devastated the predominantly rural population, a population which had survived by subsistence-farming and agricultural labour. Following this period, land achieved an even greater importance as farming families began to eschew the system of subdivision in favour of inheritance based on the stem family.[30] This practice

[28] Margaret Ward, *UnManageable Revolutionaries: Women and Irish Nationalism* (Pluto Press 1995) at 240. For discussion of the legislation introduced which negatively impacted women, see Mary Robinson, 'Women and the New Irish State', in Margaret MacCurtain and Donncha Ó Corráin, eds, *Women in Irish Society: The Historical Dimension* (Women's Press 1978); Maryann Gialanella Valiulis (1995) 'Power, Gender and Identity in the Irish Free State', *Journal of Women's History*, 6(4) and 7(1), 117-136; Sandra McAvoy, 'The Regulation of Sexuality in the Irish Free State, 1929-1935', in Greta Jones and Elizabeth Malcolm, eds, *Medicine, Disease and the State in Ireland, 1650-1940* (Cork University Press 1999); James M Smith (2004) 'The Politics of Sexual Knowledge: The Origins of Ireland's Containment Culture and the Carrigan Report', *Journal of the History of Sexuality*, 13(2), 208-233;Thomas Mohr (2006) 'The Rights of Women under the Constitution of the Irish Free State', *Irish Jurist*, 41(1), 20-59.

[29] Maryann Gialanella Valiulis (1995) 'Power, Gender and Identity in the Irish Free State', *Journal of Women's History*, 6(4) and 7(1), 117-136.

[30] The 'stem' family system provided for inheritance of the farm as a whole, directly to one offspring, typically the eldest son; rather than the system of subdivision which had led to a great number of plots of land which were too small to be sustainable. See, Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012); Carolyn Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999); Conrad M Arensberg and Solon T Kimball, *Family and Community in Ireland* (3rd ed, CLASP Press 2001). Arensberg and Solon's research was conducted in the 1930s as part of the Harvard Irish Study, 1931-1936, in which they conducted ethnographic social anthropological research living among the communities of north County Clare and in Ennis. It documents the importance in rural Ireland of the family, and the economic patterns of self-sufficiency which prevailed.

marginalised women, leaving many without occupation or place.[31] Such vulnerability is a recurring feature of the literature on women and crime in Ireland.

The Famine saw an increase in crime levels, with an increasing number of indictments and transportation sentences;[32] this was marked by an increased proportion of crimes against property without violence.[33] Female rates of larceny rose steeply, as did the rates of women committing thefts of livestock.[34] Between 1843 and 1853, the overwhelming majority of women detained in Grangegorman Convict Depot were there for these offences.[35] That the increase in women's crime during the Famine was motivated by need was made evident in the substantial decrease in women's crime in the late nineteenth-century.[36]

The prevalence of political and agrarian violence in Ireland greatly contributed to Ireland's characterisation as a restless country, and Ireland was viewed as a particularly violent country in the nineteenth-century.[37] While the basis of this claim has been disputed by

[31] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).

[32] Almost 9,000 women were transported from Ireland to Australia from the late 1700s until the 1850s. The women were predominantly in their 20s and 30s, and many were domestic servants or farm workers. They tended to be economically precarious, and levels of illiteracy and innumeracy were more severe for Irish, than for English, women. The majority of Irishwomen were transported for the minimum period of seven years, and most had committed very trivial, often first, offences. See Rena Lohan, *The Treatment of Women Sentenced to Transportation and Penal Servitude, 1790-1898* (MLitt thesis, Trinity College Dublin 1989); Deborah Oxley (2004) 'Living Standards of Women in Prefamine Ireland', *Social Science History*, 28(2), 271-295; Cal McCarthy and Kevin Todd, *The Wreck of the Neva: The Horrifying Fate of a Convict Ship and the Irish Women Aboard* (Mercier Press 2013).

[33] Transportation sentences for this offence saw the most marked rise during the Famine, see NWC Woodward (2006) 'Transportation Convictions During the Great Irish Famine', *Journal of Interdisciplinary History*, 37(1), 59-87.

[34] Rena Lohan, *The Treatment of Women Sentenced to Transportation and Penal Servitude, 1790-1898* (MLitt thesis, Trinity College Dublin 1989); NWC Woodward (2006) 'Transportation Convictions During the Great Irish Famine', *Journal of Interdisciplinary History*, 37(1), 59-87.

[35] Rena Lohan, *The Treatment of Women Sentenced to Transportation and Penal Servitude, 1790-1898* (MLitt thesis, Trinity College Dublin 1989).

[36] Contemporaneous explanations for this drop in the number of women convicted of offences highlighted a variety of factors, such as the greater leniency in sentencing for women and the creation of the General Prisons Board, see Rena Lohan, *The Treatment of Women Sentenced to Transportation and Penal Servitude, 1790-1898* (MLitt thesis, Trinity College Dublin 1989); NWC Woodward (2006) 'Transportation Convictions During the Great Irish Famine', *Journal of Interdisciplinary History*, 37(1), 59-87. Women's low participation in crime rates was a feature from much earlier also; from records from the Clonmel Assizes in the 1600s, of almost 1,500 persons brought before the court in the years for which records survive, only 84 were women. This low level (5.6 per cent) of women's proportion of crime is very atypical and much lower than England and Wales. See, Raymund Gillespie, 'Women and Crime in Seventeenth-Century Ireland', in Margaret MacCurtain and Mary O'Dowd, eds, *Women in Early Modern Ireland* (Edinburgh University Press 1991).

[37] Ian O'Donnell (2005) 'Lethal Violence in Ireland, 1841 to 2003: Famine, Celibacy and Parental Pacification', *British Journal of Criminology*, 45(5), 671-695; Niamh Howlin (2009) 'Controlling Jury Composition in Nineteenth-Century Ireland', *Journal of Legal History*, 30(3), 227-261.

some,[38] Ian O'Donnell writes that Ireland experienced a 'developmental lag', which saw violent crime in Ireland follow England's downward trajectory after a delay of decades.[39] The violence which did occur in Ireland was of a very idiosyncratic quality.[40] Violence typically occurred in rural or small-town settings, and the victim and the perpetrator were usually known to each other.[41] Irish violence was characterised by 'recreational' brawling, often as a result of drinking, or a fight arising from provocation, and it had an entertainment and quotidian character.[42]

The over-riding feature of crime in Ireland, then, was its rural character.[43] Within this, the elemental importance of land is apparent, especially following the impact of the Famine and the change to inheritance patterns. The primacy of land in Ireland meant that offences involving land disputes were punished severely.[44] Family conflict related to labour, land and inheritance has been identified as a primary motivation for homicides in the late-nineteenth- and early-twentieth-centuries.[45] That the prioritisation of land was a factor for women as well as men can be seen in the motivation for women's assaults between 1866 and 1892, which were linked to land disputes in 21 per cent of cases.[46]

Women and Crime in Ireland Post-1922

The dearth of research on women and crime in Ireland continues in the post-1922 period. It is perhaps as a consequence of women's low crime rates, allied with the 'fledgling' nature

[38] Neal Garnham, 'How Violent was Eighteenth-Century Ireland?' in Ian O'Donnell and Finbarr McAuley, eds, *Criminal Justice History: Themes and Controversies* (Four Courts 2003).
[39] Ian O'Donnell (2005) 'Lethal Violence in Ireland, 1841 to 2003: Famine, Celibacy and Parental Pacification', *British Journal of Criminology*, 45(5), 671-695 at 683.
[40] Carolyn Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999).
[41] John D Brewer, Bill Lockhart and Paula Rogers, *Crime in Ireland, 1945-95: 'Here be Dragons'* (Clarendon 1997).
[42] Carolyn Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999).
[43] John D Brewer, Bill Lockhart and Paula Rogers, *Crime in Ireland, 1945-95: 'Here be Dragons'* (Clarendon 1997).
[44] Carolyn Conley, *Certain Other Countries: Homicide, Gender and National Identity in Late Nineteenth Century England, Ireland, Scotland and Wales* (Columbus Ohio State University Press 2007).
[45] Ciaran McCullagh (1991) 'A Tie That Binds: Family and Ideology in Ireland', *Economic and Social Review*, 22(3), 199-211; Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History*, 37(1), 53-74.
[46] Carolyn Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999).

of criminology in Ireland more generally,[47] that there is a dearth of research on offending women in Ireland.[48]

While there is much continuity across the historical and more recent crime trends, one notable shift has occurred. As the twentieth-century dawned, urban centres were beginning to supplant the countryside in the crime records. However, homicide remained a largely rural phenomenon until the late-twentieth-century.[49]

Post-1922, women continued to commit a lesser proportion of crime; and while women's crime may have risen in absolute numbers, it remained proportionately stable.[50] Women's lower participation in crime rates has been borne out by a number of research studies.[51] Ciaran McCullagh has argued that women's lesser participation in crime was demonstrated by two factors, their lower crime rates, and the less serious nature of the offences which they do commit.[52]

One further aspect of crime wherein continuity can be seen relates to the crimes typically committed by women. The historical prevalence of property offences without violence is continued into the present; such offences continue to comprise the majority of female convictions in Ireland.[53] Offences for women tend to be primarily non-violent, often of a

---

[47] Ian O'Donnell (2005) 'Crime and Justice in the Republic of Ireland', *European Journal of Criminology* 2(1), 99-131, at 99.

[48] Una Convery, *Addressing Offending by Women: A Literature Review* (Northern Ireland Office, Research and Statistical Series, No. 21, 2009). Convery's study looked at Northern Ireland, and drew on Irish and British research and literature; she found that there was very little research from either Ireland or Northern Ireland on the issue of offending women.

[49] John D Brewer, Bill Lockhart and Paula Rogers, *Crime in Ireland, 1945-95: 'Here be Dragons'* (Clarendon 1997); Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History*, 37(1), 53-74.

[50] Ciaran McCullagh, *Crime in Ireland: A Sociological Introduction* (Cork University Press 1996); Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011).

[51] In a study of persons appearing before the District Court in Dublin, in the years 1988 and 1994, it was found that men far outnumbered women, 88.9 per cent to 11.1 per cent. See Ivana Bacik, Alan Kelly, Michael O'Connell and Hamish Sinclair, 'Crime and Poverty in Dublin: An Analysis of the Association between Community Deprivation, District Court Appearance and Sentence Severity', in Ivana Bacik and Michael O'Connell, eds, *Crime and Poverty in Ireland* (Round Hall Sweet & Maxwell 1998). A further study demonstrates that women are convicted of a smaller proportion of crimes than men. In 1996 of 5,202 persons convicted on indictment only 476 were women, in 1998 women accounted for 553 of 4,281 convictions and in 1999 309 of 2,341 convictions on indictment, of which 98 per cent were for property offences. See Ivana Bacik, 'Women and the Criminal Justice System', in Paul O'Mahony, ed, *Criminal Justice in Ireland* (IPA 2002).

[52] Ciaran McCullagh, *Crime in Ireland: A Sociological Introduction* (Cork University Press 1996).

[53] For example the Central Statistics Office report that in 2011 there were no women convicted of homicide offences, and that 14.3 per cent of assault of harassment offences were committed by women. In contrast, 26.4 per cent of all theft offences were committed by women, women committed 19.3 per cent of fraud and deception offences. See Central Statistics Office, *Garda Recorded Crime Statistics, 2007-2011* (CSO 2013).

petty nature; many crimes committed by women in contemporary Ireland are drug-related.[54] McCullagh found that, in 1993, the most common four offences were 'other larcenies' (shoplifting), 'forgery and uttering' (passing stolen or forged cheques), burglary, and receiving stolen goods, and these four offences accounted for 84 per cent of all offences committed by women.[55]

Contemporary Irish studies have also demonstrated disparity in sentencing between men and women. In a 1979 study, gender was found to be a factor in sentencing; women were sentenced more leniently than men in a majority of cases.[56] In a later study of District Court sentencing, it was found that a greater number of women received no conviction, compared to men; and many fewer women were sentenced to prison.[57]

One significant area of change post-1922 has been the gradual inclusion of women in the trial process. Throughout the nineteenth-century and for much of the twentieth-century the criminal justice system was characterised by the absence of female legal professionals and female jurors: 'down the years the assessment of criminality has been an entirely male assessment. It is men alone who have decided on guilt…. The male jury has been addressed by male barristers'.[58] The inclusion of women on juries as a matter of course was only achieved in the Juries Act 1974.[59] The Sex Disqualification (Removal) Act 1919 allowed women to enter public life,[60] and women were first called to the Bar in Ireland in 1921 and first practiced as solicitors in 1923.[61] In recent years, progress has finally been

[54] Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011).
[55] Ciaran McCullagh, *Crime in Ireland: A Sociological Introduction* (Cork University Press 1996).
[56] Ann Lyons and Paul Hunt, 'The Effects of Gender on Sentencing: A Case Study of the Dublin Metropolitan Area District Court', in Mike Tomlinson, Tony Varley and Ciaran McCullagh, eds, *Whose Law and Order?: Aspects of Crime and Social Control in Irish Society* (Sociological Association of Ireland 1988).
[57] 62.8 per cent of women and 42.8 of men received no conviction. See Ivana Bacik, Alan Kelly, Michael O'Connell and Hamish Sinclair, 'Crime and Poverty in Dublin: An Analysis of the Association between Community Deprivation, District Court Appearance and Sentence Severity', in Ivana Bacik and Michael O'Connell, eds, *Crime and Poverty in Ireland* (Round Hall Sweet & Maxwell 1998).
[58] Mary Robinson, 'Women and the New Irish State', in Margaret MacCurtain and Donncha Ó Corráin, eds, *Women in Irish Society: The Historical Dimension* (Women's Press 1978) at 63.
[59] The case of *deBurca v Attorney General* [1976] IR 38 was the landmark court case which saw the remaining barriers on jury service, which related to women and to rateable property, declared unconstitutional.
[60] Ivana Bacik, Cathryn Costello and Eileen Drew, *Gender Injustice: Feminising the Legal Professions?* (Trinity College Dublin Law School 2003).
[61] Progress came only slowly, it was only in 1964 that the first female judge was appointed in Ireland, and not until 1980 and 1992 that a woman was appointed to the High Court and Supreme Court respectively, see Colum Kenny, '"You just have to get on with it": The Advance of Women in the Legal Profession, 1901-2013', in Daire Hogan and Colum Kenny, eds, *Changes in Practice and Law* (Four Courts Press 2013).

made in the numbers of women entering the legal profession.[62] However, the progress was late in coming and the cases of the death-sentenced women within this thesis were tried in courtrooms composed entirely of male legal professionals and male jurors.

The following sections consider the specific areas of homicide and infanticide. This literature provides insight into women's lethal violence in Ireland, and the criminal justice response to infanticide prior to the Infanticide Act of 1949.[63]

Homicide

Women commit fewer homicides than men; this is borne out by both the historical,[64] and contemporary, figures.[65] In a sample of the years 1866 to 1892, Carolyn Conley found that women committed many fewer homicide offences than men, and were more likely to be victims than perpetrators.[66] Women were involved in only 99 of almost 2,000 homicides, and only in 50 of these cases were the women ultimately convicted.[67] When women did kill, their victims were family members in over half of the cases.[68]

The societal and official responses to lethal violence in the late-nineteenth-century were also uniquely of their time and place. Therefore, in 'fair' fights, the victim was generally presumed to have entered into the violence with forewarning and many of these homicides were written off as 'melancholy accidents'.[69] As a result of this, such homicides often did not attract murder charges and were more frequently disposed of with short sentences.[70] Conley identifies this as evidence of high tolerance of 'recreational violence' in Ireland. Conley further argues that women were treated on a par with men when they engaged in

[62] Ivana Bacik, Cathryn Costello and Eileen Drew, *Gender Injustice: Feminising the Legal Professions?* (Trinity College Dublin Law School 2003).
[63] Chapter One overviews the development of the law on infanticide.
[64] Carolyn Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999); Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History* 37(1), 53-74
[65] Between 1972 and 1991 only 7.2 per cent of known perpetrators were women. Between 1992 and 1996, only 10 per cent of known perpetrators were women, see Enda Dooley, *Homicide in Ireland: 1972-1991* (Stationery Office 1995); Enda Dooley, *Homicide in Ireland: 1992-1996* (Stationery Office 2001). Between 2003 and 2013, 91.8 per cent of known perpetrators in homicides were male, see Sarah Skedd, 'Homicide', in Deirdre Healy, Claire Hamilton, Yvonne Daly and Michelle Butler, eds, (forthcoming) *Routledge Handbook of Irish Criminology* (Routledge 2016).
[66] Carolyn Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999).
[67] ibid. While there was a higher conviction rate for women implicated, this should not obscure the fact that in absolute terms many more men were implicated and convicted.
[68] ibid.
[69] ibid.
[70] WE Vaughan, *Murder Trials in Ireland, 1836-1914* (Four Courts Press 2009).

'recreational violence',[71] and that it was accepted that 'women had the right to participate in brawls and domestic squabbles without unsexing themselves'.[72] Conley therefore argues that the courts evaluated criminal behaviour above considerations of gender.

However, these findings must be understood in relation to the interplay of gender *and* class and the rural nature of Irish society at this time. The women within this sample were primarily of the 'labouring class', and as noted in Chapter One, chivalry is extended differentially according to a woman's social class. Further, despite apparent tolerance of women's participation in recreational violence, women received more lenient sentences than men for the same type of offences. While conviction rates for men and women were broadly similar, women were more likely to attract a lighter sentence.[73] In his exploration of homicides in the 1890s, O'Donnell too found that female perpetrators were rare and that when they were convicted they tended to receive lighter sentences.[74]

However, Conley's central tenet, that women who engaged in violence in circumstances perceived as legitimate, were not viewed as less womanly, may be derived from the general perception of Irish women as hard-working, often manual workers, labouring outdoors, and therefore on a par with men.[75]

Conley argues gender was most evident in homicides with a female victim, rather than those with a female perpetrator, persons convicted of murdering women were more likely to be executed.[76] The killing of a mother, in particular aroused shock and revulsion.[77]

Infanticide

By contrast, the offence of infanticide has been historically considered a female offence. The language used herein applies the term infanticide to the murder of infants under one year by the mother; although this definition did not relate to a distinct offence in Ireland

[71] Carolyn Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999).
[72] ibid.
[73] ibid.
[74] Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History*, 37(1), 53-74.
[75] Carolyn Conley (1995) 'No Pedestals: Women and Violence in Late-Nineteenth-Century Ireland', *Journal of Social History*, 28(4), 801-818.
[76] Carolyn Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999).
[77] Carolyn Conley, *Certain Other Countries: Homicide, Gender and National Identity in Late Nineteenth Century England, Ireland, Scotland and Wales* (Columbus Ohio State University Press 2007).

until the Infanticide Act 1949, the use of the term had by then become commonplace.[78] Chapter One overviewed the legal developments which led to the creation of infanticide as a separate offence; however, this section explores how infanticide was dealt with in Ireland prior to its reconceptualisation as a non-capital offence.

O'Donnell has demonstrated the substantial levels of infanticide in nineteenth-century Ireland by highlighting their influence on the overall homicide rate; a composite of all homicides shows a downward trend from the nineteenth-century to the mid-twentieth-century. When infanticide is disaggregated from the figures this pattern alters dramatically and it is apparent that a large proportion of the decline in homicide levels can be attributed to a decline in infanticide.[79] O'Donnell writes that in some years 'the majority of homicides involved babies'.[80] These figures challenge the abovementioned truism that women committed a minority of homicides. O'Donnell describes the decline of rates of infanticide as 'one of the most dramatic shifts in lethal violence'.[81]

When women did kill their infants, they were motivated to do so by strong feelings of shame.[82] Clíona Rattigan surmises that an 'illegitimate' pregnancy would have constituted a crisis for most Irish households.[83] Stigma and marginalisation were very real prospects, in a society which valued community and conformity over individualism.[84] The sexual activities of unmarried women were subject to informal surveillance by the community, leading to infanticide investigations which could commence before a body had been found.[85]

The class element in infanticide offences is evident in Ryan's supposition that working-class women were more likely to fall under official suspicion for such offences.[86] The women who were typically accused of infanticide offences were 'unmarried…mid-to-late-

[78] Ian O'Donnell (2005) 'Lethal Violence in Ireland, 1841 to 2003: Famine, Celibacy and Parental Pacification', *British Journal of Criminology*, 45(5), 671-695.
[79] ibid.
[80] ibid at 678.
[81] ibid at 686.
[82] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).
[83] ibid.
[84] James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008).
[85] Clíona Rattigan (2008) '"I thought from her appearance that she was in the family way": Detecting Infanticide Cases in Ireland, 1900-21', *Family and Community History*, 11(2), 135-151; Clíona Rattigan, '*What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).
[86] Louise Ryan, 'The Press, The Police and Prosecution: Perspectives on Infanticide in the 1920s', in Diane Urquhart and Alan Hayes, eds, *Irish Women's History* (Irish Academic Press 2004).

twenties, educated, Roman Catholic, of the poorer classes [and] employed as a servant'.[87] The clustering of women in domestic service is indicative of the particular problems this dilemma could pose to the women who worked in the households of others; many servants were dismissed from such positions once it was known they were pregnant.[88] The close proximity between employers and employees in domestic service as well as the physically close confines of traditional family life in Ireland at this time meant that pregnancy and birth could not easily be concealed.[89] Many women gave birth alone, and complications were common.[90] Rattigan found that towards the end of their pregnancies, many women in her sample were practically homeless.[91] These profiles illustrate that economic well-being and social standing were generally incompatible with unmarried motherhood.[92]

The singular position of 'the Mother' in Irish society has been outlined in the preceding sections.[93] However the unmarried mother was by all representations an 'illegitimate' mother.[94]

> While the idealization of motherhood was a significant feature of the rhetoric of politicians in the new Irish State, the maternal body, particularly in its unmarried condition, became a central focus in the development of welfare policies of the state and the Catholic Church.[95]

The intolerance towards unmarried motherhood is demonstrated by the overwhelming links between illegitimacy and infanticide. Elaine Farrell found that in 84.7 per cent of cases

---

[87] Elaine Farrell (2012) '"Infanticide of the Ordinary Character": An Overview of the Crime in Ireland, 1850-1900', *Irish Economic and Social History*, 39(1), 56-72, at 71.
[88] ibid.
[89] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).
[90] Clíona Rattigan (2008) '"I thought from her appearance that she was in the family way": Detecting Infanticide Cases in Ireland, 1900-21', *Family and Community History*, 11(2), 135-152; Elaine Farrell (2012) '"Infanticide of the Ordinary Character": An Overview of the Crime in Ireland, 1850-1900', *Irish Economic and Social History*, 39(1), 56-72.
[91] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).
[92] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001); Maria Luddy (2001) 'Moral Rescue and Unmarried Mothers in Ireland in the 1920s', *Women's Studies*, 30(6), 797-817.
[93] Maryann Gialanella Valiulis (1995) 'Power, Gender and Identity in the Irish Free State', *Journal of Women's History*, 6(4) and 7(1) 117-136; Jayne Steel, '"And Behind Him a Wicked Hag Did Stalk": From Maiden to Mother, Ireland as Woman through the Male Psyche', in Louise Ryan and Margaret Ward, eds, *Irish Women and Nationalism* (Irish Academic Press 2004).
[94] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).
[95] Maria Luddy (2001) 'Moral Rescue and Unmarried Mothers in Ireland in the 1920s', *Women's Studies*, 30(6), 797-817, at 798.

analysed, the infant was illegitimate.[96] This condemnation was not accompanied by prevalent concerns for the economic and social realities of women facing 'illegitimate motherhood'.[97] Instead, illegitimacy was viewed as a national epidemic in the period post-1922 which led to alarmism in the 1920s and 1930s as unmarried motherhood became a central concern for the new State.[98] Paul Michael Garrett found that although the rate of illegitimate births remained low for much of the post-1922 period, they did peak in the early 1930s.[99] This concern prompted a zealous Gardaí who engaged in a State-sanctioned morality crusade.[100] The prescriptive and proscriptive morality emanating from the Irish State is evident throughout, for example in the occasional dismissal of an infanticide case where the woman agreed to marry the putative father.[101] Beyond these cases, the sole focus of the criminal justice system tended to centre on the mother, while fathers were seldom held accountable.[102] Ryan highlights the puritanical bent of the reporting of infanticide cases also in the absence of any reference to sex or contraceptives.[103]

It has also been suggested that the narratives which emerge from reading cases are indicative of a society in which the morally imperious doctrines of the Catholic Church and the Victorian influence were not internalised by the working-classes.[104] Twenty-three out of 56 cases in Rattigan's sample suggest evidence of a relationship between the mother and father which could be characterised as a consensual, sexual relationship.[105] This more

[96] Elaine Farrell (2012) '"Infanticide of the Ordinary Character": An Overview of the Crime in Ireland, 1850-1900', *Irish Economic and Social History*, 39(1), 56-72.
[97] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).
[98] Maria Luddy (2001) 'Moral Rescue and Unmarried Mothers in Ireland in the 1920s', *Women's Studies*, 30(6), 797-817; Louise Ryan, The Press, 'The Police and Prosecution: Perspectives on Infanticide in the 1920s', in Diane Urquhart and Alan Hayes, eds, *Irish Women's History* (Irish Academic Press 2004).
[99] Paul Michael Garrett (2000) 'The Abnormal Flight: The Migration and Repatriation of Irish Unmarried Mothers,' *Social History*, 25(3), 330-343.
[100] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012). This zealous crusade saw Guards question women suspected of infanticide closely about their sexual histories.
[101] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012); Karen Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.
[102] The father was referred to in 6 per cent of 4,645 cases, see Elaine Farrell (2008) '"The Fellow Said it was No Harm and Only Tricks": The Role of the Father in Suspected Cases of Infanticide in Ireland, 1850-1900', *Journal of Social History*, 45(4), 990-1004.
[103] Louise Ryan, 'The Press, The Police and Prosecution: Perspectives on Infanticide in the 1920s', in Diane Urquhart and Alan Hayes, eds, *Irish Women's History* (Irish Academic Press 2004).
[104] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012); Karen Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.
[105] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).

tolerant attitude towards sexuality, in which sexual relationships were negotiated between two persons of equal standing, are in direct contradiction to the overwhelming opprobrium reserved for sex outside of marriage.[106] The belief that unrecorded everyday practices of sexuality were far removed from doctrinaire State and church teaching is also espoused by Ferriter.[107]

Regarding outcome, women prosecuted for infanticide were generally shown leniency by the courts.[108] While Gardaí may have pursued cases rigorously, the lenient approach to sentencing would appear to emanate from a view of these women as vulnerable, rather than dangerous.[109] Of 71 cases of suspected infanticide from 1900 to 1921, 38 were convicted of concealment of birth. The next most common outcome was acquittal, which occurred in ten cases; only three women were found guilty of infanticide.[110] Karen M Brennan found that of 160 cases in which women were charged with infanticide in the Central Criminal Court between 1924 and 1949, most were convicted of a lesser charge.[111] Of these, most received a term of imprisonment of a year or less. Only eight cases of maternal infanticide were convicted of the capital charge and these sentences were commuted to penal servitude for life. Brennan also notes that many women did not receive a custodial sentence at all. Decisions taken by the Attorney General at the earliest stages of criminal prosecution meant that a charge of murder was only pursued if the evidence was overwhelming.[112]

Various strategies rendered these cases of infanticide more sympathetic. Farrell noted that although the average age of the women in her sample was 26, the representation of such women was as young and naïve girls. Even when the women were in their 30s, they were still referred to as 'girls'.[113] Women were also represented as mentally ill or mentally 'defective', tactics which could also serve to justify a more humane judicial response. Some of the women accused of infanticide were deemed to have been temporarily insane at

[106] Karen Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.
[107] Diarmaid Ferriter, *Occasions of Sin* (Profile 2009).
[108] Karen M Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.
[109] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).
[110] ibid.
[111] Karen M Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.
[112] ibid.
[113] Elaine Farrell (2012) '"Infanticide of the Ordinary Character": An Overview of the Crime in Ireland, 1850-1900', *Irish Economic and Social History*, 39(1), 56-72.

the time of the killing, and were placed in Magdalen laundries.[114] There was an assumed link to imbecility as well, something which presented a double threat to both genetic inheritance and social order.[115] Luddy writes that repeated illegitimate pregnancies alone were considered evidence of mental defectiveness.[116]

Despite the official leniency shown to women prosecuted for infanticide, many judgments in these cases emphasised the judicial fear that infanticide involved the deliberate taking of a life and was therefore a crime of the most serious nature.[117] This is particularly noted in Chapter Five, in the 'Moral Panic' of illegitimacy from the late-1920s. The need to restate the gravity of the offence suggests that infant murder was not considered 'real' murder,[118] and that illegitimate infants held a low value for most of the period under discussion.[119]

Infanticide rates declined throughout the twentieth-century, largely due to changing social attitudes and the improved economic and social circumstances for unmarried mothers.[120] The decline of infanticide offences is also inextricably linked to the availability of abortion in Britain in the twentieth-century.[121] In Britain, the Abortion Act 1967, which for the first time ensured a statutory framework for abortion, enabled many Irish women experiencing unwanted pregnancies to travel there for abortion.[122] The decline in infanticide was also linked to the lessening of the stigma of unmarried motherhood in Ireland. In 1973 unmarried mothers began to receive State allowance for the first time, while the Status of

---

[114] James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008).
[115] Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999); Shane Kilcommins, Ian O'Donnell, Eoin O'Sullivan and Barry Vaughan, *Crime, Punishment and the Search for Order in Ireland* (IPA 2004).
[116] Maria Luddy (2001) 'Moral Rescue and Unmarried Mothers in Ireland in the 1920s', *Women's Studies*, 30(6), 797-817.
[117] Louise Ryan, 'The Press, The Police and Prosecution: Perspectives on Infanticide in the 1920s', in Diane Urquhart and Alan Hayes, eds, *Irish Women's History* (Irish Academic Press 2004).
[118] Elaine Farrell (2012) '"Infanticide of the Ordinary Character": An Overview of the Crime in Ireland, 1850-1900', *Irish Economic and Social History*, 39(1), 56-72.
[119] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).
[120] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001); Ian O'Donnell (2005) 'Lethal Violence in Ireland, 1841 to 2003: Famine, Celibacy and Parental Pacification', *British Journal of Criminology*, 45(5), 671-695.
[121] In *R v Bourne* [1938] 3 All ER 615, the abortion performed on a young girl who had been raped by soldiers, was held to be lawful under the 1861 Offences Against the Person Act which had prohibited abortion. This ruling in Britain provided some measure of protection, even earlier than the 1967 Act, protection which was not enjoyed by those in Ireland. See, Ivana Bacik (2013) 'The Irish Constitution and Gender Politics: Developments in the Law on Abortion', *Irish Political Studies*, 28(3), 380-398.
[122] Ivana Bacik, (2013) 'The Irish Constitution and Gender Politics: Developments in the Law on Abortion', *Irish Political Studies*, 28(3), 380-398.

Children Act 1987 removed the legal category of 'illegitimate' to children born to unmarried parents.[123]

Punishment and Confinement of Women

The following sections review the practices of punishment and confinement of women in Ireland. Throughout, the blurred boundaries between semi-penal and penal sites are explored. The recent attention on institutionalisation has occasioned a re-examination of the relationships between crime and the confinement of women in Ireland.[124] These relationships are particularly reconsidered in the context of the Catholic Church, and its influence as a 'superstructure' within Irish life from the latter half of the nineteenth-century.[125] Women's lives act as a site on which to observe the impact of Catholic teachings which viewed 'women as complementary, rather than equal, to men'.[126] This Catholic 'superstructure' was evident in its concrete form throughout Ireland via the 'architecture of containment'.[127] The institutionalisation of women and children became a significant feature of Irish society post-1922.[128] The importance of both semi-penal and penal sites of detention for Irish women who had contravened societal and legal standards is laid out herein to demonstrate the expanded criminal justice landscape.

Semi-Penal Sites of Confinement

Psychiatric Institutions

Despite the late development of psychiatric sites of confinement in Ireland compared to England, this was followed by the wholesale adoption of institutionalisation in Ireland;

[123] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).
[124] See, for example, Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999); James M Smith (2004) 'The Politics of Sexual Knowledge: The Origins of Ireland's Containment Culture and the Carrigan Report', *Journal of the History of Sexuality*, 13(2), 208-233; Maria Luddy, *Prostitution and Irish Society, 1800-1940* (Cambridge University Press 2007); James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008); Final Report of the Commission to Inquire into Child Abuse, the 'Ryan Report' (Stationery Office 2009); Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).
[125] Evelyn Mahon (1994) 'Ireland: A Private Patriarchy?', *Environment and Planning A*, 26(8), 1277-1296.
[126] ibid at 1279.
[127] James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008).
[128] Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999).

between 1851 and 1900 the number of persons detained in Irish asylums tripled.[129] Expressed as the number of persons per 100,000, Ireland's psychiatric hospital population rose from 88.43 in 1851 to 749.35 in 1956; this adoption of institutionalisation as a response to problem populations meant that in 1956 Ireland had the highest numbers of persons psychiatrically confined in the world, with 21,720 inmates.[130]

Damien Brennan cites social, rather than pathological factors, as underpinning the Irish reliance on institutionalism, including high levels of social deprivation and the rural nature of Irish society.[131] The reorganisation of Irish society post-Famine was crucial to the Irish reliance on institutionalisation; Eoin O'Sullivan and Ian O'Donnell list the underdeveloped industrial infrastructure across most of Ireland and the repercussions of displacement from land following the Famine.[132] Asylums became one element of a network of sites of coercive confinement, utilised to cope with an over-supply of labour, providing households with a solution to problematic family members, while also providing the economic lifeblood of communities.[133] The asylums were significantly populated by agricultural labourers, particularly from the west of Ireland, displaced from the land post-Famine.[134]

The literature shows that insanity was constructed along gendered lines. For example, expressions of female insanity were linked to reproductive causes or internal, 'emotional', factors,[135] while male insanity was characterised as a response to external factors, such as alcohol consumption.[136] In addition to the preponderance of reproductive factors in the committals of women, the gendered nature of entry into asylums was evident in the

[129] The asylum populations continued to expand rapidly even in a period of depopulation, and accounting for these underlying demographic shifts, the asylum population actually quadrupled. See, Mark Finnane, *Insanity and the Insane in Post-Famine Ireland* (Croom Helm 1981).
[130] Damien Brennan, *Irish Insanity, 1800-2000* (Routledge 2014).
[131] ibid.
[132] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).
[133] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012); Damien Brennan, *Irish Insanity, 1800-2000* (Routledge 2014).
[134] Mark Finnane, *Insanity and the Insane in Post-Famine Ireland* (Croom Helm 1981).
[135] For example, the menopause was considered a significant factor for older women, see Áine McCarthy, 'Hearths, Bodies and Minds: Gender Ideology and Women's Committal to Enniscorthy Lunatic Asylum, 1916-1925', in Diane Urquhart and Alan Hayes, eds, *Irish Women's History* (Irish Academic Press 2004). Although insanity was initially considered a marker of refinement, by the turn of the century and into the 1900s it was viewed more often as degeneracy, and debate on appropriate responses turned to questions of sterilisation. Likewise, rising rates of institutionalisation were blamed on the falling birth rates of the middle-classes. In this way, the stain of insanity was viewed as more likely to be passed from a mother to her child, particularly from mother to daughter. See generally Elaine Showalter, *The Female Malady: Women, Madness and English Culture, 1830-1980* (Virago 1987).
[136] Elizabeth Malcolm, 'Women and Madness in Ireland, 1600-1850', in Margaret MacCurtain and Mary O'Dowd, eds, *Women in Early Modern Ireland* (Edinburgh University Press 1991).

committal of women for behaviour which was considered deviant. Women who disobeyed parents or heads of household, or who demonstrated behaviour deemed inappropriate for their gender, including expressions of autonomy in issues of marriage or sexuality, were vulnerable to expulsion from the family home.[137] Áine McCarthy cites the lesser status of females in rural families as a key factor behind the admittance to asylums of dispossessed, marginalised women.[138] Kennedy also highlights the second tier position of women in male-headed households which were focused on the need for sons to work the land.[139]

'Criminal lunacy' was also heavily gendered. When the Criminal Lunatic Asylum at Dundrum, County Dublin, opened in 1850, men were five times more likely to be committed than women.[140] Between 1850 and 1900, of 823 committals, only 21 per cent were women.[141]

The nature of the offences committed by inmates also demonstrated the gendering of insanity; women were more likely to be found insane for killing children while men were more likely to be found insane for killing wives and female family members.[142] In a post-1910 sample, half of all women who were admitted to Dundrum had killed children and only one woman had killed her spouse. In contrast to this, 26 per cent of the men had killed a spouse.[143] Pauline Prior, echoing the argument of Conley,[144] writes that women who killed were not generally classified as mad but were instead afforded equal agency; the exception being women who killed infants.[145]

Women were discharged from Dundrum after spending shorter periods of time there than men.[146] As women were more likely to be committed for killing their infant, discharge

[137] Áine McCarthy, 'Hearths, Bodies and Minds: Gender Ideology and Women's Committal to Enniscorthy Lunatic Asylum, 1916-1925', in Diane Urquhart and Alan Hayes, eds, *Irish Women's History* (Irish Academic Press 2004).
[138] ibid.
[139] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).
[140] Pat Gibbons, Niamh Mulryan and Art O'Connor (1997) 'Guilty but Insane: The Insanity Defence in Ireland, 1850-1995', *British Journal of Psychiatry*, 170(5), 467-472.
[141] Pauline Prior, *Murder and Madness: Gender, Crime and Mental Disorder in Nineteenth-Century Ireland* (Irish Academic Press 2008).
[142] ibid.
[143] Pat Gibbons, Niamh Mulryan and Art O'Connor (1997) 'Guilty but Insane: The Insanity Defence in Ireland, 1850-1995', *British Journal of Psychiatry*, 170(5), 467-472.
[144] Carolyn Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999).
[145] Pauline Prior, *Murder and Madness: Gender, Crime and Mental Disorder in Nineteenth-Century Ireland* (Irish Academic Press 2008).
[146] Pat Gibbons, Niamh Mulryan and Art O'Connor (1997) 'Guilty but Insane: The Insanity Defence in Ireland, 1850-1995', *British Journal of Psychiatry*, 170(5), 467-472.

often happened quickly as women were judged to recover quickly from the 'disturbance' created by childbirth; many of these women were then transferred to local asylums.[147] This transcarceration undermines assumptions about leniency for women based on time spent in Dundrum alone.

Nor can the successful use of the insanity defence be equated with leniency, as argued by Prior, who writes that women who killed children were treated with greater leniency than women who killed adult men.[148] The indeterminate nature of confinement in Dundrum and the practice of transcarceration suggest a more nuanced picture. Arguably, the processing of cases through the criminal justice system, or the downgrading of charges to manslaughter, could sometimes represent a more effective form of leniency. In such cases it is submitted that women's agency is acknowledged by assuming the rationality of her actions.

Magdalen Laundries

Magdalen laundries were initially established in the eighteenth-century as lay-run voluntary refuges for 'fallen' women.[149] Although they began as lay institutions, female religious orders and congregations later took over their running.[150] Luddy writes that most women entered voluntarily and many chose to remain there for long periods.[151] However, Luddy also found that women required permission to leave and that in some cases women resorted to escape.[152] This suggests that even in the pre-1922 formulation of Magdalen laundries, a paternalistic approach to women viewed 'at risk' found expression in punitive regimes.

Post-1922, the Magdalen laundries took on a new, more targeted, role, becoming part of the nation's 'architecture of containment'.[153] They were reimagined by the State as one

[147] Pauline Prior, *Murder and Madness: Gender, Crime and Mental Disorder in Nineteenth-Century Ireland* (Irish Academic Press 2008).
[148] Pauline Prior (2005) 'Murder and Madness: Gender and the Insanity Defence in Nineteenth-Century Ireland', *New Hibernia Review*, 9(4), 19-36.
[149] Luddy notes that these punitive regimes occasionally involved having the women's hair shorn, see Maria Luddy (1997) 'Abandoned Women and Bad Characters: Prostitution in Nineteenth-Century Ireland', in Alan Hayes and Diane Urquhart, eds, *The Irish Women's History Reader* (Routledge 2001).
[150] Maria Luddy, *Women and Philanthropy in Nineteenth-Century Ireland* (Cambridge University Press 1995).
[151] ibid.
[152] ibid.
[153] James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008).

part of an institutional response to the perceived crisis of illegitimacy.[154] Magdalen laundries were viewed as suitable for 'fallen' women who had given birth to more than one illegitimate infant.[155] It was hoped that the segregation of this population would remove the 'contagion' from County Homes. The laundries therefore represented the nadir of institutions for unmarried mothers.[156]

The laundries were also used as alternative sites of punishment for women who had been convicted of a range of offences, from petty crimes to manslaughter.[157] Brennan found that between 1924 and 1949, 40 of 45 women given a suspended sentence and 33 of 53 women given a conditional discharge for infanticide-offences were detained in religious-run institutions for terms between three months and three years.[158] James M Smith, too found that women convicted of concealment of birth or the manslaughter of their infants were often sentenced for up to three years in the laundries.[159] From 1922 to 1949, almost half of unmarried women convicted of the manslaughter of their infant or concealment of birth served their sentence in a religious-run institution; in these sites they often spent longer than they would have in prison.[160] This use of the Magdalen laundries was a post-1922 phenomenon; Rattigan writes that before then, the judiciary were reluctant to send women convicted of infanticide offences to these institutions, but that this changed post-1922.[161]

Brennan argues that the use of these religious-run institutions for women convicted of infanticide offences is indicative of a patriarchal state; however she disputes whether it was also indicative of a punitive response which sought to punish women for both their legal

[154] Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999).
[155] Paul Michael Garrett (2000) 'The Abnormal Flight: The Migration and Repatriation of Irish Unmarried Mothers', *Social History*, 25(3), 330-343. Garrett has argued that the harsh conditions in such institutions and the lengthy periods for which women could be confined there provided the motivation for many pregnant Irish women to travel to Britain.
[156] Maria Luddy (2001) 'Moral Rescue and Unmarried Mothers in Ireland in the 1920s', *Women's Studies*, 30(6), 797-817.
[157] Karen Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.
[158] ibid.
[159] James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008).
[160] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).
[161] Clíona Rattigan (2008) '"I thought from her appearance that she was in the family way": Detecting Infanticide Cases in Ireland, 1900-21', *Family and Community History*, 11(2), 135-151; Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).

and moral transgressions.[162] Brennan argues that there was no clear indication of judicial motive; she contends that as many of the women convicted of infanticide-related offences such as manslaughter or concealment of birth had originally been charged with murder, their confinement in the religious-run institutions cannot be absolutely defined as punitive.[163]

This view is contradicted by the work of Smith who cites the punishing regimes of Magdalen laundries.[164] Within these institutions, women were infantilised and the harsh regimes removed their agency and autonomy.[165] Certain laundries were also known to be particularly harsh, and it was to these institutions that intractable women were sent, often as punishment from other laundries.[166]

By the 1940s there was some official unease about the practice of detaining women in these religious-run institutions; the rationale for doing so had been the dubious authority of the Probation of Offenders Act 1907, a vague legal underpinning at best.[167] This unease led to discussions between the Archbishop of Dublin, John Charles McQuaid, and the State, to devise solutions; the resulting Criminal Justice Act 1960 provided that women could be remanded to institutions other than prison.[168] While Magdalen laundries were never explicitly referenced in this legislation, recurrent mentions of them during the Dáil Debates on the issue made clear that this was the intention.[169] Section 9 of this Act provided for the detention of girls between the ages of 16 and 21 while on remand or sentence.[170]

The Magdalen laundries have come under sustained scrutiny in the past decade. In 2013, the McAleese Report found that approximately 10,000 women entered laundries between 1922 and 1996, and these entries were facilitated by the State in 26.5 per cent of cases. The

[162] Karen Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.
[163] ibid.
[164] James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008).
[165] ibid.
[166] Gloucester Street in Dublin and the Good Shepherd in Limerick are cited by James Smith as the harshest laundries. See James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008).
[167] Karen Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.
[168] James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008).
[169] ibid.
[170] Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013).

Report also found that approximately 8.1 per cent of all entries were from the criminal justice system.[171] The Report found that the regime in the laundries was, 'by today's standards, a harsh and physically demanding work environment.'[172] The qualified nature of the Report's findings, typified in this quote regarding regimes, is countered by much of the academic work in this area,[173] referenced throughout this section, and by the survivors and advocacy organisations which represent the women who were detained in Magdalen laundries.[174]

Other Semi-Penal Sites of Confinement

Although Magdalen laundries are institutions of particular importance within the current research, they existed as one part of a network of various other semi-penal sites of confinement. As noted by Mary Raftery and Eoin O'Sullivan, these semi-penal sites were largely established for women and children.[175] This network of institutions also included County Homes, Mother and Baby Homes, and Industrial and Reformatory Schools.

Magdalen laundries, Mother and Baby Homes and County Homes,[176] were all used to confine unmarried mothers in particular.[177] This network of institutions was developed post-1922 and amounted to a new system for containing unmarried mothers, categorised according to their 'moral' character, a binary classification of redeemable or incorrigible,

[171] These figures are expressed as a percentage of cases in which the origin of the referral was known. These figures are not exhaustive, as the records for some of the laundries were incomplete. Further, the exclusion of some institutions from the terms of the Committee's inquiry was controversial, see, 'Submission to the United Nations Committee Against Torture', 'Justice for Magdalenes (JFM) Ireland' (May 2011).
[172] Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013) at 4.
[173] The McAleese Report attempts, through recurrent mentions of the existence of Magdalen laundries prior to Independence, to place the use of these institutions within a longer historical period. However, this does not take into consideration the repurposing of laundries post-1922. Writers such as James Smith have adamantly highlighted the State's complicity in the confinement of persons within these sites. Smith has argued that the extensive network of religious institutions acted as a bulwark for the fledgling State post-Independence, while the State also benefited by divesting itself of a social care burden. In return, the Catholic Church gained power and authority from its primary role as enforcers and guardians of informal social control. Smith has argued that the State, by its shedding of responsibility for vulnerable persons, was complicit in the deprivations, exploitation and cruelty which occurred in these institutions. James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008).
[174] Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999); James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008).
[175] Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999).
[176] Prior to Independence, County Homes had been known as workhouses.
[177] Maria Luddy (2001) 'Moral Rescue and Unmarried Mothers in Ireland in the 1920s', *Women's Studies*, 30(6), 797-817.

entrenched in a two-tier network of confinement.[178] 'First offenders' were afforded greater tolerance, and could be admitted to Mother and Baby Homes.[179] Magdalen laundries were used for 'repeat offenders'. Garrett has identified this terminology as one of criminalisation, a discursive construction which justified the prolonged confinement of women.[180] However, despite the establishment of a new institutional response to unmarried mothers, Luddy notes that many women were still choosing to enter State-run County Homes rather than the more punitive regimes of the religious-run institutions.[181] This network of institutions was also divided along class boundaries as well as along lines of moral differentiation, and Rattigan writes that the poorest women were more likely to enter Magdalen laundries and County Homes.[182] In 1956, there were 65 women per 100,000 confined in County Homes, Mother and Baby Homes, or Magdalen laundries.[183] Illegitimate infants born or brought up in these institutions faced much higher mortality rates; in 1928 the mortality rate among illegitimate children was five times higher than that of legitimate children.[184]

The interlocking nature of Ireland's network of institutions is evident in the transcarceration which occurred between the various semi-penal sites. For example many 'repeat offenders' gave birth to children who were later sent to Industrial Schools,[185] and many girls who had been detained in Industrial Schools went on to be confined in Magdalen laundries.[186]

---

[178] ibid.

[179] Maria Luddy noted that this practice dated from the nineteenth-century; she writes that Protestant ladies' societies often visited hospital to speak with women aged under 21 who were pregnant; these women would be offered assistance or supervised reconciliation with family members, but only if they were pregnant with their first child, see Maria Luddy, *Women and Philanthropy in Nineteenth-Century Ireland* (Cambridge University Press 1995).

[180] Paul Michael Garrett (2000) 'The Abnormal Flight: The Migration and Repatriation of Irish Unmarried Mothers,' *Social History*, 25(3), 330-343.

[181] Maria Luddy (2001) 'Moral Rescue and Unmarried Mothers in Ireland in the 1920s', *Women's Studies*, 30(6), 797-817.

[182] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).

[183] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).

[184] Maria Luddy (2001) 'Moral Rescue and Unmarried Mothers in Ireland in the 1920s', *Women's Studies*, 30(6), 797-817.

[185] ibid.

[186] Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999).

Girls always outnumbered boys in the network of Industrial Schools throughout Ireland.[187] They were often detained in Industrial or Reformatory Schools for reasons related to female sexuality and paternalistic notions of protection.[188] Here, as Eoin O'Sullivan noted, the 'docile females' needed as the 'shock troops' for the perpetuation of Catholic morality were produced.[189] While these institutions were not peculiar to Ireland, and existed in Scotland and England as well, O'Sullivan writes that in Ireland girls had particularly high levels of detention. By 1876 'there were more females contained within the Irish system than were contained in the other jurisdictions combined.'[190]

In short, this network of semi-penal sites of confinement existed as a shadow penal system in which troubling and troublesome women and girls could be detained.

Imprisonment

The longitudinal picture of women's imprisonment in Ireland shows a rate which reached its peak in the mid-nineteenth-century before beginning a steep and prolonged decline.[191] As noted earlier, the effects of the Famine were far-reaching, including in the imprisonment rates of women; in the mid-1840s, the proportion of female prisoners rose from around a quarter to closer to half.[192] In the decades following the Famine the number of women in prison declined,[193] and continued to do so throughout much of the twentieth-

[187] In 1999, the government issued an apology to those who had been detained as children in Ireland's Industrial Schools. In response to revelations in a television documentary, *States of Fear*, which aired that year also, a Commission to Inquire into Child Abuse in these institutions was also established. These institutions existed from 1868 until 1969, and received children from families considered unable to adequately care for their children, a wide and discretionary policy. In 1970, when the system was closed, almost 150,000 children had passed through the Schools. Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999).
[188] ibid.
[189] Eoin O'Sullivan, 'Juvenile Justice and the Regulation of the Poor: "restored to virtue, to society and to God"', in Ivana Bacik and Michael O'Connell, eds, *Crime and Poverty in Ireland* (Round Hall Sweet & Maxwell 1998) at 90.
[190] Eoin O'Sullivan, 'Juvenile Justice and the Regulation of the Poor: "restored to virtue, to society and to God"', in Ivana Bacik and Michael O'Connell, eds, *Crime and Poverty in Ireland* (Round Hall Sweet & Maxwell 1998) at 88-89.
[191] In 1999, the Dóchas Centre opened in Dublin, the first purpose-built women's prison in Ireland for over a century. This typifies the state of Irish women's prisons for much of the twentieth-century which was characterised by falling prisoner rates and closing women's prisons. For an account of the Dóchas Centre see Barbara Mason, 'A Gendered Irish Experiment: Grounds for Optimism,' in Frances Heidensohn, ed, *Gender and Justice: New Concepts and Approaches* (Willan 2006).
[192] Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011).
[193] See, for example, Geraldine Curtin, *The Women of Galway Jail: Female Criminality in Nineteenth-Century Ireland* (Arlen House 2001); Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011).

century.[194] However, the inclusion of sites of semi-penal confinement suggests an alternative history of the confinement of women.[195]

From the late-nineteenth-century, the formal processes of the criminal justice system were considered in need of specific adaptation to accommodate women. While men were released from prison on licence, women were often released to religious-run 'refuges'. Contemporary reports suggested that only seven of 100 women who passed through the 'refuges' were reconvicted, and they were considered more humane than Magdalen laundries, however reports of five women who escaped suggest a punitive element.[196] The tendency of women to be subject to informal social control was also evident here; for example, the Sister in charge of Goldenbridge, the main 'refuge', advocated lengthy stays to better effect rehabilitation.[197] Goldenbridge opened in 1856 and closed in 1891,[198] and during this period 1,232 women passed through its doors.[199] There was also a Protestant equivalent, the Heytesbury Street refuge, which was regarded as less well run and less successful. The contrasting success of Goldenbridge however, cemented the perception of female religious orders and congregations as competent in the provision of social care.[200]

Christina Quinlan found that marginalisation and addiction were historical, as well as contemporary, features of Irish women in prison.[201] The offences for which women were imprisoned have also remained relatively constant over the past 200 years:

> [W]omen have been imprisoned in Ireland for larceny, mostly petty larceny, and for public order offences. They were and still are committed to prison as vagrants, drunkards and beggars, and were and still are divided into two classes fundamentally, good women and bad women.[202]

---

[194] Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011).
[195] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).
[196] Maria Luddy, *Women and Philanthropy in Nineteenth-Century Ireland* (Cambridge University Press 1995).
[197] ibid.
[198] Following the closure of the 'refuge', Goldenbridge became an Industrial School, see Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999).
[199] Maria Luddy, *Women and Philanthropy in Nineteenth-Century Ireland* (Cambridge University Press 1995); Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011).
[200] Maria Luddy, *Women and Philanthropy in Nineteenth-Century Ireland* (Cambridge University Press 1995).
[201] Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011).
[202] ibid at 240.

Post-1922, the approach to women prisoners was characterised by neglect. Mary Rogan has observed that this neglect was occasionally the subject of criticism in the press, and the lack of care taken with female offenders sporadically became newsworthy.[203] In 1930, the number of women in prison was 917, by 1935 it was 666, and in 1937 it was 301, and become worthy of remark by the Minister for Justice.[204] Rogan writes that tiny numbers characterised the women's prison population for much of the post-1922 period as plans for a new women's prison, which would have been the first for over a century, 'were placed on the longest of long fingers'.[205] The closure of women's prisons became the trend for much of the post-1922 period.[206]

In conclusion, Quinlan characterises female imprisonment in Ireland as follows:

> The nature of female imprisonment in Ireland is evident in the protective, moral and religious character of much of that imprisonment, in the petty, personal or sexual nature of that imprisonment, and in the gendered nature of those experiences of imprisonment.[207]

As is evident from the previous sections, the low numbers of women in prison hid the very high numbers of women confined in other, semi-penal, sites.[208]

Women and the Death Penalty in Ireland

This section presents a discussion of death-sentenced women in Ireland; it provides the historical context in which the archival research will be grounded through study of the

[203] Mary Rogan, *Prison Policy in Ireland: Politics, Penal Welfarism and Political Imprisonment* (Routledge 2011).
[204] Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011).
[205] Mary Rogan, *Prison Policy in Ireland: Politics, Penal Welfarism and Political Imprisonment* (Routledge 2011) at 118.
[206] Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011). Geraldine Curtin has noted that the high numbers of women emigrating from the nineteenth-century throughout much of the twentieth-century contributed to falling imprisonment rates for women. See, Geraldine Curtin, *The Women of Galway Jail: Female Criminality in Nineteenth-Century Ireland* (Arlen House 2001).
[207] Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011) at 65.
[208] Women have also been imprisoned in Ireland as political prisoners, as nationalists and suffragists. The experiences of female political prisoners represent atypical examples of female imprisonment, for more on this cohort. See, for example, Rosemary Cullen Owens, *Smashing Times: A History of the Irish Women's Suffrage Movement* (Attic Press 1984); Constance Markievicz, *The Prison Letters of Countess Markievicz* (Esther Roper ed, Virago 1987); Cliona Murphy, *The Women's Suffrage Movement and Irish Society in the Early Twentieth Century* (Temple University Press 1989); Margaret Ward, *UnManageable Revolutionaries: Women and Irish Nationalism* (Pluto 1995); Sinéad McCoole, *Guns and Chiffon: Women Revolutionaries and Kilmainham Gaol 1916-1923* (O'Brien Press 2004).

existing literature.[209] This literature comes from scholarship on infanticide,[210] insanity and criminal responsibility,[211] and historical accounts of crime and punishment.[212] However, no specific works exist on death-sentenced women in Ireland. Thus the below is a fragmentary picture, gleaned from disparate accounts which did not take this cohort as their original starting point.

The existing literature suggests that the application of the death penalty in pre-Independence Ireland was a gendered process. Women represented a category of persons whom it was deemed distasteful to execute.[213] The execution of a woman was contentious;[214] capitally convicted women were therefore more likely to be reprieved than capitally convicted men.[215]

This tendency for women to comprise a minority of executed persons was evident in the late-eighteenth-century and into the nineteenth-century; Brian Henry writes that there were 10 confirmed women executed out of a total of 242 hangings in Dublin between 1780 and 1796.[216] WE Vaughan found that between 1852 and 1921, only four women out of the 47 capitally convicted were hanged.[217] In an analysis of homicide in the year 1891, O'Donnell found that female perpetrators 'were more likely to be hospitalised than men and they were less likely to receive a heavy penalty; none was sentenced to death'; the majority tended to

[209] Brian Henry, *Dublin Hanged: Crime, Law Enforcement and Punishment in Late-Eighteenth-Century Dublin* (Irish Academic Press 1994); David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91.
[210] Elaine Farrell (2012) '"Infanticide of the Ordinary Character": An Overview of the Crime in Ireland, 1850-1900', *Irish Economic and Social History*, 39(1), 56-72; Karen M Brennan (2013) '"A Fine Mixture of Pity and Justice': The Criminal Justice Response to Infanticide in Ireland, 1922-1949', *Law and History Review*, 31(4); Karen M Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.
[211] Pauline Prior, *Murder and Madness: Gender, Crime and Mental Disorder in Nineteenth-Century Ireland* (Irish Academic Press 2008).
[212] Carolyn Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999); WE Vaughan, *Murder Trials in Ireland, 1836-1914* (Four Courts Press 2009).
[213] WE Vaughan, *Murder Trials in Ireland, 1836-1914* (Four Courts Press 2009).
[214] Pauline Prior (2005) 'Murder and Madness: Gender and the Insanity Defence in Nineteenth-Century Ireland', *New Hibernia Review*, 9(4), 19-36.
[215] Carolyn Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999).
[216] Henry found evidence of 10 confirmed executions, and another possible three which could not be confirmed.
[217] Vaughan also includes the comparable figures for England: 23 women were hanged between 1843 and 1862, and 17 were hanged between 1862 and 1882, WE Vaughan, *Murder Trials in Ireland, 1836-1914* (Four Courts Press 2009). See also Carolyn Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999); Pauline Prior, *Murder and Madness: Gender, Crime and Mental Disorder in Nineteenth-Century Ireland* (Irish Academic Press 2008).

spend less than six months in prison.[218] Women were only executed when their cases were deemed particularly onerous, degrees of gravity related to the status of the victim and the circumstances of the killing. Although, as Henry noted, women had been death-sentenced in the late eighteenth-century for offences such as theft,[219] by the second half of the nineteenth-century, the most substantial cohort of women sentenced to death had killed an infant. However, all of these condemned women were reprieved, and the women hanged in Ireland during the latter half of the nineteenth-century had all killed adults.[220] The women executed in the latter half of the nineteenth-century had also killed in cases where there was evidence of premeditation and the opportunity for personal gain.[221]

As noted earlier in the chapter, research on women charged with infanticide has found that the majority were ultimately convicted of lesser, infanticide-related offences, such as manslaughter or concealment of birth.[222] Of those women who were convicted of infanticide and sentenced to death, none were executed; all 29 women capitally convicted of infanticide in the latter half of the nineteenth-century were reprieved.[223] Many of these reprieved women were released from prison within five years.[224] A reluctance to execute women convicted of infanticide was also evident in Henry's study of late-eighteenth-century Dublin hangings; despite the bodies of infants being discovered with regularity, no woman was executed between 1780 and 1796 for the crime of infanticide.[225]

---

[218] Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History*, 37(1), 53-74, at 67.

[219] Brian Henry found that four women were executed for theft offences and that only 11 per cent of all executions between 1780 and 1796 were for murder. Brian Henry, *Dublin Hanged: Crime, Law Enforcement and Punishment in Late-Eighteenth-Century Dublin* (Irish Academic Press 1994).

[220] WE Vaughan, *Murder Trials in Ireland, 1836-1914* (Four Courts Press 2009).

[221] Pauline Prior, *Murder and Madness: Gender, Crime and Mental Disorder in Nineteenth-Century Ireland* (Irish Academic Press 2008).

[222] Karen M Brennan (2013) '"A Fine Mixture of Pity and Justice": The Criminal Justice Response to Infanticide in Ireland, 1922-1949', *Law and History Review*, 2013, 31(4); 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.

[223] Elaine Farrell (2012) '"Infanticide of the Ordinary Character": An Overview of the Crime in Ireland, 1850-1900', *Irish Economic and Social History*, 39(1), 56-72.

[224] The commutation of death sentences to penal servitude for life had been the policy in Britain and Ireland from 1864, but even at the 1866 Commission there was evident unease that such women continued to be capitally sentenced. In 1886, the Lord Lieutenant of Ireland requested a report on women capitally convicted of infanticide since 1864. Following debate on these cases, nine of the 11 women still in prison for the crime were released. In 1903, a similar report was again requested and another group of reprieved infanticide cases were released. Pauline Prior, *Murder and Madness: Gender, Crime and Mental Disorder in Nineteenth-Century Ireland* (Irish Academic Press 2008).

[225] Brian Henry, *Dublin Hanged: Crime, Law Enforcement and Punishment in Late-Eighteenth-Century Dublin* (Irish Academic Press 1994).

The evident unease towards executing women remained post-1922. Doyle and O'Donnell found that the gender differential in commutation persisted; from 1923 to 1964, only one woman was executed from 22 capitally convicted.[226] They found similar sympathy extended to infanticide cases post-1922; of 22 women sentenced to death, 12 of these had committed infanticide and all were reprieved. However, it was not until the Infanticide Act 1949 that the offence was finally removed from the list of capital crimes.[227]

Conclusion

The crimes, punishment and confinement of women in Ireland must be understood within a conceptual framework of Irish womanhood heavily influenced by Catholic Church teachings, Victorian conservatism and nationalist discourse. The 'ideal' woman that emerged from these influences was understood according to the roles of domesticity and motherhood, with consequent societal disapproval for those women who offended gender stereotypes. However, for many Irish women, adherence to ideal womanhood was unattainable and the reality of their life was a physically demanding, rural existence; this feature strongly influenced the offending behaviour of women from the mid-nineteenth-century through much of the twentieth-century. The impact of the Famine, which brought devastation to the Irish countryside, saw a spike in women's crime rates. The offences committed by women in this period, many of whom were members of the 'labouring class', were indicative of the rural nature of Irish society. However, from this peak, women's crime rates dropped in the late-nineteenth-century. The volume of crime committed by women continued to fall in the post-1922 period, leading to the closure of many women's prisons.

Women committed a minority of crimes of violence and homicide across the nineteenth- and twentieth-centuries. The geographical profile of homicides remained rural throughout the 1800s, and into the 1900s; this was illustrated by the motivations to kill which were based on land and inheritance. Many of the women who committed crimes of violence and homicide during this period were women of the 'labouring class' and the chapter has demonstrated the interplay of gender and class in responses to lethal violence in Ireland.

[226] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91.
[227] ibid.

Similarly, responses to infanticide from the nineteenth-century were enmeshed with the prevailing mores of Irish society. Infanticide was committed in a society in which illegitimacy was hugely stigmatised. While the formal criminal justice disposal of infanticide cases was couched in the terminology of mercy, this mercy was extended on paternalistic grounds which judged women harshly for immorality. Further, the admission records of the Central Mental Hospital suggest that 'mercy' was understood as individual pathologisation in cases of infanticide.

Paternalism was also evident in the belief that the formal punishments of the criminal justice system were inappropriate for women. This was demonstrated by the view that prison was an unsuitable place for women, and capital punishment an unsuitable penalty. Those women who were executed, had been convicted of murdering men, in cases where there was evidence of premeditation. The outer limits of tolerance were evident in this harsher treatment of women who had killed adults, particularly adult men; the only women executed from the latter half of the nineteenth-century had been condemned to death for the murder of men. However, official unease persisted in cases of women sentenced to death, evident in the numbers of women whose sentence was commuted.

While the formal punishments of the penal system were considered inappropriate for women, a network of semi-penal sites presented a network of institutions established to detain offending women. The use of these semi-penal sites demonstrated the influence of the Catholic Church in Ireland, particularly in the development of institutional responses to non-conforming women and children. While many of these institutions, such as Magdalen laundries, had existed prior to Independence, post-1922 a renewed reliance on the institutionalisation of women and children is evident.

Ian O'Donnell and Eoin O'Sullivan have considered the network of semi-penal institutions with reference to Foucault's concept of the 'carceral archipelago'. They found that from 1922 onwards levels of institutionalisation of women and children were high, reaching a peak in the mid-1950s, followed by a precipitous decline. When these figures are combined with the general trends for imprisonment post-1922, they conclude that, 'A clear gender dimension to this pattern is evident. Where women and children are concerned, and

taking a span of almost ninety years, Ireland is a case study not in transcarceration, but in decarceration.'[228]

Women faced the threat of confinement in a multitude of ways, above and beyond the official penal system. These alternative, semi-penal institutions often cast a longer shadow over Irish women's lives. That many of these institutions had no male counterparts is indicative of a society in which femininity was subject to invasive control.

The chapter has demonstrated a specifically Irish paternalism towards women who violated gender norms and legal rules, evident in the reluctance to execute women, in the mercy extended to condemned women, in the framing of prison as unsuitable for women, and in the use of morally reformative semi-penal sites of confinement.

[228] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012) at 261.

Chapter Four

Case Studies:[1] Women Sentenced to Death in Ireland Post-Independence

Introduction

Twenty-five women were sentenced to death in Ireland post-Independence. Of these 25 women, only one was executed;[2] one had her conviction quashed, and was acquitted at retrial,[3] and two women had their convictions quashed and were later convicted of lesser, non-capital offences.[4] Twenty-one women were sentenced to death and later reprieved. All of the death-sentenced women had been capitally convicted of murder; 11 for the murder of an adult and 14 for the murder of an infant.

This chapter seeks to provide a profile of women sentenced to death in Ireland post-1922.[5] The chapter opens with an overview of the historical context for capital punishment in Ireland post-Independence and the trend over time in the numbers of women sentenced to death. The numbers of women sentenced to death clustered in the 1920s, and decreased sharply from this decade; this trend presents an argument for the understanding of the female death sentence as singularly different from the male experience. Following this overview, a summary of the headline features is presented including the legal outcomes of the cases, the characteristics of the crimes, and the biographical information of the death-sentenced women. These sections are presented with contextual information relating to the structures and demographic features of Irish society and the place of women in Ireland

[1] Within this initial findings chapter which seeks to provide an overview of the cases of women sentenced to death, a listing of the key archival sources used on the cases are provided at the first mention of each condemned woman by name. The details of these archives are also available in the narratives of the cases, provided in the Appendix.

[2] Annie Walsh was hanged in Mountjoy Prison on 5 August 1925 for the murder of her husband. Two of the 25 women within the sample were named Annie Walsh. For clarity throughout these chapters, these two women are identified by their name and the year in which they were convicted and sentenced to death: Annie Walsh (1925) and Annie Walsh (1929).

[3] Mary Lenihan, see *Attorney General v Mary Lenihan* [1929] 63 ILTR 100; 'After Three Trials: Grandmother Found Not Guilty of Child Murder' *Irish Times* (7 June 1929).

[4] Ellen Keogh and Marie Murray. For Ellen Keogh, see NAI Department of Justice 18/7448A. For Marie Murray see, *The People (DPP) v Noel Murray and Marie Murray* [1977] 111 ILTR 65; 'The verdict that removed the hangman's rope' *Irish Independent* (4 May 1977).

[5] The Appendix provides more detailed information on the women sentenced to death, including basic biographical information on the age of the women, and where they lived, as well as the identity of the victim, and the date on which the murder was committed. This information can be found in the Table in the Appendix. Synopses of the 25 case studies, in chronological order by date of conviction, are presented in the Appendix also to contextualise the analysis and illustrate the stories of these women. As a feminist piece of research, the 'recovery' of the facts in each case was a fundamental element of the thesis. The discussion of the case studies also provides contextual grounding to aid a more in-depth analysis of the findings of the discourse analysis which will be presented in the following chapters.

throughout this period. Comprehensive analyses of the issues raised in this initial overview chapter will be presented in the following five chapters which in turn deal with themes of Infanticide, Mercy, Confinement, Pathology, and Appropriate Femininity.

Contextual Overview

The death penalty existed in Irish legislation from the foundation of the State in 1922, until it was expunged in the 1990 Criminal Justice Act.[6] Within this span of 68 years, 25 women were sentenced to death. In 2001, a constitutional amendment was passed by referendum which prohibited the reintroduction of capital punishment. Between 1922 and the removal of capital punishment from the statute books in 1990, there were two significant reforms; the first occurred in the Infanticide Act 1949 which made infanticide an offence akin to manslaughter,[7] and the second in the Criminal Justice Act 1964 which removed the capital status from the majority of murders, retaining it only for certain political or subversive killings such as the killing of a member of the Garda Síochána or a prison officer in the course of his or her duty.[8]

The first woman sentenced to death in post-Independence Ireland was Hannah Flynn on 27 February 1924.[9] Mamie Cadden was the last woman sentenced to death prior to the introduction of the 1964 reforms; she was convicted on 1 November 1956.[10] The only woman sentenced to death following these 1964 reforms was Marie Murray, who was

[6] Section 1 of this Act stated that 'No person shall suffer death for any offence.'
[7] Section 1(3) of the Infanticide Act 1949: 'A woman shall be guilty of felony, namely, infanticide if (a) by any wilful act or omission she causes the death of her child, being a child under the age of 12 months, and (b) the circumstances are such that, but for this section, the act or omission would have amounted to murder, and (c) at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child.' See Chapter One for a fuller discussion of the legal developments on infanticide.
[8] Section 1(1) of the Criminal Justice Act 1964 stated that a person shall not be liable to suffer death for any offence other than (a) treason under the Treason Act, 1939 (b) capital murder, namely (i) murder of a member of the Garda Síochána acting in the course of his duty, or (ii) murder of a prison officer acting in the course of his duty, or (iii) murder done in furtherance of various offences under the Offences Against the State Act 1939 or in furtherance of the activities of an unlawful organisation or (iv) murder committed within the State for a political motive, of the head of a foreign State, of a member of the Government, or a diplomatic officer of a foreign state, and finally (v) various offences under military law under the Defence Act 1954. Section 2 provided that persons who would, but for the Act, be liable to suffer death, would subsequently be liable to penal servitude for life.
[9] NAI Central Criminal Court (hereinafter 'CCC') Kerry 1923 1C-79-22; Department of Justice 18/2769A Hannah Flynn.
[10] NAI Court of Criminal Appeal (hereinafter 'CCA') 36/1956; Department of An Taoiseach S.16116; Department of Justice 18/3562.

convicted of capital murder in the Special Criminal Court on 9 June 1976.[11] Marie Murray subsequently had her capital murder conviction quashed and was convicted at the retrial of non-capital murder.

Number of Women Sentenced to Death	Decade
12	1922-1929
6	1930-1939
5	1940-1949
1	1950-1959
0	1960-1969
1	1970-1979

Table 4.1: Number of Women Sentenced to Death by Decade

As Table 4.1 shows, more death sentences were handed down to women from the period 1922 to 1929, immediately following the creation of the State, than in any other decade post-1922. The number of death sentences in each decade dropped considerably following this peak. As David M Doyle and Ian O'Donnell found in their account of capital punishment post-Independence, the rate of death sentences peaked in the period 1923 to 1929, but declined in the decades thereafter;[12] they cite a high of 15 executions in these years with another 20 persons reprieved. Doyle and O'Donnell note also that this matches the downward trend in homicides generally in Ireland during this period.[13] The exception to this decline occurred during World War II, a period known in Ireland as the 'Emergency', during which the number of executions increased while the homicide rate continued to fall. During this period, the 'mercy ratio' shifted and more persons were executed than reprieved. This shift occurred during a period of increased IRA violence, but the authors noted that only seven of the 13 executions were directly political. Doyle and O'Donnell suggest that security fears during this time may have fomented a more punitive atmosphere within the Department of Justice.[14] While Doyle and O'Donnell classify this as part of the trend, this 'trend' applied primarily to men and obscures the trend for women

[11] *The People (DPP) v Noel Murray and Marie Murray* [1977] 111 ILTR 65; NAI Department of An Taoiseach 2006/133/701; 2006/133/702; 2006/133/703; 2006/133/704; 2007/116/769.
[12] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91. Doyle and O'Donnell excluded from their analysis the 81 executions which occurred during the Civil War as these were qualitatively different from the judicial peace-time executions which followed.
[13] Ian O'Donnell (2005) 'Lethal Violence in Ireland, 1841 to 2003: Famine, Celibacy and Parental Pacification', *British Journal of Criminology*, 45(5), 671-695.
[14] Mary Rogan identified a hardening of official attitudes within the Department of Justice during periods of political violence in Ireland. See, Mary Rogan, *Prison Policy in Ireland: Politics, Penal Welfarism and Political Imprisonment* (Routledge 2011).

sentenced to death. As Table 4.1 shows, the occurrence of female death sentences has an almost unbroken downward trend from the peak of 12 from 1922 to 1929; this figure halved in the following decade and experienced no late spikes or reversals, unlike the trend for male death sentences.

The signally different profile of female death sentences in Ireland post-Independence is partially explained by reference to the low numbers of women sentenced to death for political offences, a feature which inflated the figures for men in the period 1939-1945. The last woman sentenced to death in Ireland was Marie Murray, and her case is atypical in its explicit political connection. Marie Murray was sentenced to death by the non-jury Special Criminal Court under a legal framework established by the Criminal Justice Act 1964 which created a distinct category of capital murder for subversive killings.[15] This death sentence, occurring much later than the others, and over a decade after the abolition of the death penalty for 'ordinary' murders, was qualitatively different within the sample. It provided an example of the use of the death sentence in a modern and modernising Ireland. Marie Murray, despite some confusion among the authorities and the general public about her exact political affiliation, represents the only political killing in the entire sample of 25 women.

Strains of political violence are evident in other cases, although none could be defined as political killings. The murder of John Cousins by his aunt, Jane O'Brien, in 1932 is such a case; Jane O'Brien had shot her nephew and attempted to make the crime seem politically motivated.[16] Cousins's killing happened just two weeks after Fianna Fáil had won their first election victory against Cumann na nGaedheal, the party for which Cousins worked as an election agent. The murder, occurring at Easter, the night before large-scale commemorations of the 1916 Easter Rising, also suggested a political element, and his shooting was initially considered within this context.

The case of Mary Moynihan also provides an example which, while not political itself, speaks to wider themes of political violence. Mary was convicted for the murder of her employer, Nora Horgan, which had taken place on 9 September 1922 at which time much

[15] *The People (DPP) v Noel Murray and Marie Murray* [1977] 111 ILTR 65; NAI Department of An Taoiseach 2006/133/701; 2006/133/702; 2006/133/703; 2006/133/704; 2007/116/769.
[16] NAI CCC Wexford 1932 1C-95-73; CCA 9/1932; Department of An Taoiseach S.8653; Department of Justice 18/2737.

of the country was affected by violence related to the Civil War.[17] Due to the instability in rural Cork, where the killing took place, the crime was not fully investigated until late-1923. Some newspapers reported that Republican forces in the area held an inquest following the murder, indicating the unrest and uncertainty which prevailed at that time.[18] Mary Moynihan also named as the perpetrator a local man who was known to be involved with the Republicans, suggesting she was exploiting the suspicion in the area at this time for her own ends.[19]

Another case which can more obliquely be tied to a context of political violence was that of Hannah Flynn. Flynn's case was tried before the Dublin Commission,[20] which had been established in October 1923 in an attempt to draw a line under the violence of the preceding two years.[21] In addition to these particular cases, which can all be read as tangentially related to political violence, there was a tendency for letter writers corresponding on behalf of condemned women to appeal for clemency by referencing the patriotic pasts of particular women's families. Letter writers also invoked the Republican pasts of various Ministers for Justice.[22]

The explicitly political nature of the capital crimes committed by some men was, then, not a significant feature of the capital crimes committed by women.[23] This difference accounts for some of the disparity in the trends identified over time. Unlike the 'general', or 'male', trend in capital punishment post-Independence, the number of women sentenced to death began with a peak in the period from 1922 to 1929 and never again saw comparable figures. The gendering of capital punishment as 'male' in Ireland springs from this association of the death penalty with the execution of men for subversive offences perpetrated against British forces, the death penalty was therefore often understood as a

[17] NAI CCC Cork 1924 1C-79-21; CCA 17/1924; Department of Justice 234/1744.
[18] For example, 'County Cork Murder Mystery' *Irish Times* (18 January 1924).
[19] NAI Department of Justice 234/1744. Statement of Jeremiah Horgan, 19 October 1923.
[20] 'Death Sentence Commuted' *Irish Times* (6 March 1924).
[21] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91.
[22] For example, in the case of Elizabeth and Rose Edwards, NAI Department of Justice 18/885A, or Mary Agnes Bernadette Daly, NAI Department of Justice 170/7622.
[23] Six of 34 men executed post-1923 had been convicted of political offences. In the period November 1922 to March 1923, 81 men were executed for political offences as part of the Civil War. David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91. Mary Rogan has found that the political violence and imprisonment of political offenders throughout the post-Independence period in Ireland significantly shaped the prison policy and Department of Justice outlook on crime and justice issues, see Mary Rogan, *Prison Policy in Ireland: Politics, Penal-Welfarism and Political Imprisonment* (Routledge 2011).

political weapon of suppression.[24] It was singularly ill-equipped for women, who could barely fit within its 'maleness'; the presumed 'maleness' was evident even in the official documentation on which 'he/his' would be scored out in pen and replaced with a handwritten 'she/her'.[25]

The construction of capital punishment and imprisonment as male phenomena in Ireland, evident in the bureaucratic terminology, has obscured the female experience of these processes and regimes. An analysis of capital punishment in Ireland from this previously unexplored perspective creates an alternative map of significance to one based on an understanding from the 'male' experience of capital punishment. For example, the legal reforms to the offence of infanticide in 1949 contributed to the downward trend in the number of death sentences imposed on women. Until 1949, there had been no legal concession that infanticide was different from murder, despite the efforts of successive Attorneys General, and of juries, to mitigate the severity of the law. The enactment of the Infanticide Act 1949 presented a significant milestone in the experience of capital punishment for women, but not men.[26]

Incorporating a gendered analysis in this manner presents an alternative history of the death penalty. O'Donnell cited the falling homicide rate of infants aged 12 months and under as the most significant pattern in the 160-year period from 1841 until 2003. O'Donnell's inclusion of gender, in his analysis of the applicability of the 'civilising' hypothesis on rates of lethal violence, confirmed the need to incorporate gendered understandings of crime.[27]

The downward trend in the numbers of women sentenced to death also corresponded to falling numbers of women imprisoned during the mid-twentieth-century in Ireland. The falling numbers of women who were committed to prison post-1922 led to the closure of a

[24] Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006).
[25] This was evident throughout a number of the archival records on the 25 death-sentenced women, for example in the licences issues to women who were released from prison while serving sentences of penal servitude for life; such as on the licence of Hannah O'Leary, NAI Department of Justice 18/2770A.
[26] Karen M Brennan (2013) '"A Fine Mixture of Pity and Justice": The Criminal Justice Response to Infanticide in Ireland, 1922-1949', *Law and History Review*, 31(4).
[27] Ian O'Donnell (2005) 'Lethal Violence in Ireland, 1841 to 2003: Famine, Celibacy and Parental Pacification', *British Journal of Criminology*, 45(5), 671-695.

number of prisons for women and the emergence of female prisoners as a negligible and forgotten population within a system dominated by men.[28]

Although the numbers of women confined in penal sites was falling for much of the post-1922 period, women *were* being confined in semi-penal sites, often in religious-run institutions. The institutionalisation of women in semi-penal sites, considered more appropriate than imprisonment for women, is also a feature of the research herein. Coercive confinement in Ireland post-1922 was comprised of an expansive network of semi-penal sites, which eclipsed prison in terms of the numbers of inmates held in each.[29] The detention of women in religious-run institutions was evident in many cases within the current sample; hospitalisation in the Central Criminal Lunatic Asylum was also noted in two cases herein.[30] The analysis presented in these chapters therefore draws not only on the discursive construction of the 25 women within the criminal justice system, but extends to how they were understood within larger structures of coercive confinement and gender which prevailed in Irish society.

Outcome of Cases

Twenty-four of the 25 women sentenced to death were not executed. Only Annie Walsh (1925) was executed.[31] A further 21 women had their sentence commuted to penal servitude for life, and three had their verdict altered in some way subsequently, resulting in either acquittal or conviction for a non-capital offence. In addition to the three women whose appeals were successful, many other women had Court of Criminal Appeal files.[32] Unlike the case of Annie Walsh (1929) however, not all appeals were heard in full.[33] In the case of Mary Agnes Bernadette Daly, her appeal was refused but her case was referred to the Supreme Court on a point of law of exceptional public importance; that Court quashed

[28] Christina Quinlan, *Inside: Ireland's Women's Prisons Past and Present* (Irish Academic Press Dublin 2011); Mary Rogan, *Prison Policy in Ireland: Politics, Penal Welfarism and Political Imprisonment* (Routledge 2011).
[29] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement: Patients, Prisoners and Penitents* (Manchester University Press 2012); Damien Brennan, *Irish Insanity: 1800-2000* (Routledge 2014).
[30] See Chapter Eight for a discussion of the cases of Elizabeth Doran and Mamie Cadden.
[31] NAI CCC Limerick 1925 1C-90-14; Department of Justice H1004/275.
[32] Mary Moynihan, Hannah O'Leary, Annie Walsh (1929), Christina Russell, Jane O'Brien, Elizabeth and Rose Edwards, Mary Somerville, Agnes McAdam, Frances Cox and Mamie Cadden.
[33] NAI CCC Galway 1929-1931 1C-94-56-58; CCA 16/1929; Department of An Taoiseach S.5904; Department of Justice 234/2599.

her conviction, but Daly was again capitally convicted of murder at the subsequent retrial.[34]

Discourses of pathology were evident in the two examples within the sample, Elizabeth Doran[35] and Mamie Cadden,[36] who were certified as insane post-conviction. Doran and Cadden were transferred from Mountjoy Prison to the Central Criminal Lunatic Asylum in Dundrum, Dublin.

Of the 25 condemned women, four had been convicted along with a male. In 1925, Hannah O'Leary was convicted jointly with her brother Con for the murder of their eldest brother Patrick.[37] Annie Walsh (1925) and Michael Talbot were tried separately and both found guilty for the murder of Annie's husband. Annie Walsh (1929) was convicted jointly with Martin Joyce for the murder of her husband. And in 1976, Marie Murray was convicted along with her husband Noel Murray for the capital murder of Garda Michael Reynolds. In 1944, Ellen Keogh and John Mitchell were tried separately for the infanticide of their illegitimate infant, only Ellen was convicted; she was later convicted for the manslaughter of her infant instead.

The majority of the women who had their sentence commuted to penal servitude for life spent relatively short periods of time in prison, although this varied significantly. Deborah Sullivan spent four months and three weeks in prison,[38] while Mary Kiernan spent six months and three days there.[39] However, Hannah Flynn[40] and Hannah O'Leary[41] spent considerably longer periods in prison; 18 years and eight months in the case of Hannah Flynn and 17 years and three months for Hannah O'Leary.

Doyle and O'Donnell state that the median time spent in prison for reprieved women was three and a half years.[42] They contrast this with the median figure for men, of seven and a half years. Doyle and O'Donnell selected the median value to discount the influence of the

[34] NAI CCC Unknown Counties 1949 1D-50-42; CCA 68/1948; Department of an Taoiseach S.14430; Department of Justice 170/7622.
[35] NAI CCC Wicklow 1926 1C-90-28; Department of Justice 234/1297.
[36] NAI CCA 36/1956; Department of An Taoiseach S.16116; Department of Justice 18/3562.
[37] NAI CCC Cork 1925 1C-90-3; CCA 18/1925; Department of Justice 18/2770A and 18/2770B.
[38] NAI CCC Kerry 1929 1C-94-61; Department of An Taoiseach S.5886; Department of Justice 234/2590.
[39] NAI CCC Westmeath 1925-1927 1C-90-26; Department of An Taoiseach S.5195; Department of Justice 234/1491.
[40] NAI CCC Kerry 1923 1C-79-22; Department of Justice 18/2769A.
[41] NAI Department of Justice 18/2770A and 18/2770B.
[42] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91.

two atypical cases of Hannah Flynn and Hannah O'Leary, but these cases illustrate wider truths which will be explored further in later chapters which discuss the discretionary confinement of women. Although median lengths of imprisonment for reprieved women were shorter than for reprieved men, women often spent longer periods confined in penal and semi-penal sites, as a result of decision-making processes which were inherently discretionary and informal.

For the 21 women who had their death sentences commuted, a substantial number were ultimately released from prison to a religious-run institution; this conditional discharge could occur within a short period of time post-conviction, alternatively in the cases mentioned above of Hannah Flynn and Hannah O'Leary, release to an institution could also come after many years. In all, of the 21 reprieved women, 11 were conditionally discharged from prison to a religious-run semi-penal site. Another woman, Kate Owens, was released from prison to a paid situation in an institution run by a religious organisation.[43]

These semi-penal institutions have come under intense scrutiny in recent years in Ireland. Various Commissions of Inquiry have been established by successive governments to investigate the conditions, practices and State involvement with institutions, such as the Reformatory and Industrial Schools,[44] the Magdalen laundries,[45] and Mother and Baby Homes.[46] Each of the inquiries was prompted by calls from survivors and the advocacy groups who campaigned on their behalf. Political action was often prompted by revelations which called into question the treatment of vulnerable persons in these religious- or State-run institutions. The work of academics and journalists in this area has done much to bring the experiences of persons within institutions to the fore.[47]

The use of religious-run institutions in cases of reprieved women offers an alternative interpretation of the experience of women sentenced to death in Ireland post-Independence

[43] NAI CCC Westmeath 1943 1D-22-84; Department of An Taoiseach S.13383; Department of Justice 18/6678A.
[44] Final Report of the Commission to Inquire into Child Abuse, the 'Ryan Report' (Dublin 2009).
[45] Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013).
[46] A Commission of Investigation into Mother and Baby Homes was announced early in 2015.
[47] See for example Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999); James J Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008); Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).

and expands on the above claim that women spent relatively short periods of time in prison. When confinement in these semi-penal sites is incorporated into an analysis of women and capital punishment in Ireland, a different history emerges. This history is characterised by informal social control and by confinement in religious-run institutions; this confinement was secured by processes which were lacking in transparency and which were grounded in paternalistic assumptions about the detained women. These are investigated in greater depth in Chapter Seven.

It is argued that the investigation of time spent in prison is thus inadequate due to the number of women who were conditionally discharged to semi-penal sites. Time spent coercively confined in these institutions ranged considerably, from one year and three months,[48] to three years and one month,[49] while one woman, Mary Anne Keane, spent at least five years and seven months in such an institution.[50] In the case of Keane, it is unsure if or when she was eventually released and under what circumstances. There are other cases in which it was unknown when, or indeed if, the women were released from the institution; cases such as that of Jane O'Brien,[51] Agnes McAdam,[52] and Hannah O'Leary, leave no definite comment on what happened within the files.[53] It is known definitively that two women who were conditionally discharged from Mountjoy Prison to religious-run institutions died there, while another remained there for much of her life before transfer to hospital some years before her death.[54] The reintroduction of this means of understanding confinement should force a refocusing of how 'leniency' is understood.[55] An investigation which focuses only on time spent in prison by reprieved women fails to contextualise the

[48] In the case of Elizabeth Edwards, NAI Department of Justice 18/885A.
[49] In the case of Deborah Sullivan, NAI Department of Justice 234/2590.
[50] NAI CCC Roscommon 1929 1C-94-69; Department of An Taoiseach S.5884; Department of Justice 18/3540.
[51] NAI CCC Wexford 1932 1C-95-73; CCA 9/1932; Department of An Taoiseach S.8653; Department of Justice 18/2737.
[52] NAI CCC Monaghan 1946 1D-29-11; CCA 16/1946; Department of An Taoiseach S.13804; Department of Justice 18/9074A.
[53] Once again, bearing in mind the contingent nature of archival research, this finding refers to those extant archives which were accessible.
[54] Elizabeth Hannon and Margaret Finn died in the religious-run institutions to which they were discharged, Hannah Flynn spent years in such an institution before her release to hospital where she died. See, Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013).
[55] Ian O'Donnell found that for homicides committed in the 1890s, women were more likely than men to be hospitalised following the killing. Women also received lesser penalties than men for homicides, with many serving sentences of six months or less. No women in this decade were convicted of murder, therefore none were sentenced to death. See, Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History* 37(1), 53-74.

coercive confinement of many women and how this impacted the effective sentence length served by women; it also cannot explore the rationales for these decisions.

Doyle and O'Donnell write that, 'Leaving aside cases of baby-killing the gender difference in execution remains pronounced: half of male murderers died compared with one in ten females.'[56] However, these figures mask the degree to which reprieved women were subject to discretionary lengths of imprisonment and coercive confinement post-conviction. As demonstrated above, the time spent by women post-prison in religious-run institutions drastically alters the notions of perceived leniency by gender.

Profile of the Crime

Victims

Within the sample of 25 women, there were 24 victims.[57] Thirteen of the victims were infants, all of which were aged less than one month. Of the remaining victims, seven were adult men and four were adult women. In the entire sample, 19 women were convicted for killing within their family, four killed persons they knew outside of their family, while only two killed strangers.

No woman was sentenced to death for multiple murders; however there was evidence that some of the women had previously killed their 'illegitimate' infants, for example in the case of Kate Owens[58] who had a prior conviction for concealment of birth and who had initially been charged with three counts of infanticide or, in the case of Frances Cox,[59] who was convicted of the manslaughter of her infant prior to her arrest for the murder of her brother.

As demonstrated in Chapters One and Three, the literature, both internationally and from Ireland, has shown that the character of female-perpetrated homicides is different to those of men. Women commit homicides at lower rates than men, and when women do kill, their

[56] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91, at 74.
[57] Elizabeth and Rose Edwards were jointly convicted for the murder of Elizabeth's infant.
[58] NAI CCC Westmeath 1943 1D-22-84. Statement of Kate Owens, 8 May 1943.
[59] NAI CCC 1D-29-7; CCA 72/1949; Department of An Taoiseach S.14689; Department of Justice 18/11757.

victims are more likely to be drawn from their immediate family, typically children or partners.[60]

The identity of the victim in homicides is significantly intertwined with how the killing is understood.[61] The relationship between perpetrator and victim therefore dictated many of the discourses which were invoked on the killings herein. For example, the killing of a man by a woman, and especially the killing of a man by his spouse, bore traces of *petit treason* and may have carried a corresponding need to punish more severely to reflect the seriousness of the offence.[62] The execution of Annie Walsh (1925), alone among the sample, for the murder of her husband, suggested that women who killed men could not be afforded mercy on the same terms as women who killed in different circumstances. Similarly, other cases which prompted particular official condemnation were the cases of Annie Walsh (1929),[63] also convicted with her lover for murdering her husband, and Jane O'Brien, convicted of killing her adult nephew in 1932.[64] These two cases attracted significant official censure and also prompted more serious debate on the question of commutation than was afforded in many other cases. The hierarchical nature of the gender relations meant that they were problematic cases in which to extend mercy.

The mantra that female-perpetrated homicides are different to killings committed by males is a general trend, but does not account for all the cases within the current sample. Ian O'Donnell found that homicides occurring as a result of disputes between employers and employees accounted for 15.2 per cent of all homicides in the 1890s; none of the killings within O'Donnell's sample were committed by women.[65] In the current sample however, the cases of Hannah Flynn and Mary Moynihan fit this profile of women who killed current or former employers. As with cases of women who killed men, which were less

[60] In an Irish context see Enda Dooley, *Homicide in Ireland: 1972-1991* (Stationery Office 1995); Carolyn A Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999); Enda Dooley, *Homicide in Ireland: 1992-1996* (Stationery Office 2001); Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History* 37(1), 53-74.

[61] As outlined in Chapter Three, Pauline Prior found that women who killed children were more likely to be pathologised and confined in the Central Criminal Lunatic Asylum, whereas the cohort of men most likely to be hospitalised were those who killed their wives or female relations. Pauline M Prior, *Madness and Murder: Gender, Crime and Mental Disorder in Nineteenth-Century Ireland* (IPA 2008).

[62] Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000).

[63] NAI Department of An Taoiseach S.5904. Petition on behalf of Annie Walsh.

[64] NAI Department of Justice 3/18/2737A.

[65] Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History* 37(1), 53-74.

capable of being explained away as the consequences of a disordered mind, the killing of an employer also signalled a reversal of the natural order and may have urged more serious legal disposals. Finola Kennedy wrote that the structure of the Irish household for the first decades of the twentieth-century saw a strict understanding of binary hierarchies of husband/wife, parent/child, and master/servant. In this matrix of duty and fealty the killing of employers was considered particularly insidious, particularly when the killings were perpetrated by live-in domestic servants.[66]

Killings which occurred during the commission of another offence accounted for 5.6 per cent of the homicides in O'Donnell's sample from the 1890s but, again, none had been committed by women.[67] In the current sample, the cases of Mary Agnes Bernadette Daly, Mamie Cadden and Marie Murray arguably match this description.[68] Cadden was performing an illegal abortion procedure prohibited under the Offences Against the Person Act 1861 and Murray was attempting to flee from the scene of a bank robbery. The suspicion that Daly had been attempting to rob her victim when the murder occurred did not ultimately form part of the charge against her but it remains within the narrative of her case.

This discussion has demonstrated that the majority of the cases herein are legible as *typically* female-perpetrated killings, such as the killing of infants or intimate partners. These cases offer readily understandable gendered narratives of motivation. Lizzie Seal has argued that women who kill are understood within narrow heteronormative standards, typified by marriage and motherhood, in the victim of husband or child; however focusing solely on these cases marginalises and renders unknowable the cases which fall beyond this.[69]

[66] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).
[67] Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History* 37(1), 53-74.
[68] In the case of Mamie Cadden, it was the very fact of death occurring during the commission of an illegal abortion that rendered the death a murder, *Attorney General v Mary Anne Cadden* [1957] 91 ILTR 97.
[69] Lizzie Seal, *Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010).

Means of Killing

As with victim, means of killing could affect how the women were understood. Method of killing was a weapon, such as a hatchet, in six of the cases.[70] Two of the women shot their victims.[71] In two cases, death was caused by poisoning,[72] and one woman was convicted of murder following death which occurred during the performance of an illegal abortion.[73] Of 13 infanticides, drowning was the cause of death in four cases,[74] the skull of the infant was fractured in two cases,[75] strangulation was the cause of four of the deaths,[76] and suffocation in one,[77] while in one case the stage of decomposition was such to render the cause of death unknown,[78] and in the final case no body was ever recovered.[79]

The method of killing informed the construction of the death-sentenced women in official and press discourses, rendering some women more sympathetic and ensuring greater censure for others. This differential condemnation according to method of killing is evident in research from the nineteenth-century Irish criminal justice disposals also. O'Donnell found that deaths resulting from drunken brawls and fights were more likely to result in relatively short terms of imprisonment.[80] This is suggestive of a scale of culpability for homicides which was intimately connected to the means of killing. Carolyn Conley has also found that for homicides occurring between 1866 and 1892, deaths occurring from

[70] Hannah Flynn, see NAI CCC Kerry 1C-79-22; Department of Justice 18/2769A; Mary Moynihan, see NAI CCC Cork 1924 1C-79-21; CCA 17/1924; Department of Justice 234/1744; Hannah O'Leary, see NAI CCC Cork 1925 1C-90-3; CCA 18/1925; Department of Justice 18/2770A and 18/2770B; Annie Walsh (1925) see, NAI CCC Limerick 1925 1C-90-14; Annie Walsh (1929), see NAI CCC Galway 1929-1931 1C-94-56-58; CCA 16/1929; Mary Agnes Bernadette Daly, see NAI CCC Unknown Counties 1949 1D-50-42; CCA 68/1948.
[71] Jane O'Brien, see NAI CCC Wexford 1932 1C-95-73; CCA 9/1932, and Marie Murray, *The People (DPP) v Noel Murray and Marie Murray* [1977] 111 ILTR 65.
[72] Agnes McAdam, see NAI CCC Monaghan 1946 1D-29-11; CCA 16/1946, and Frances Cox, see NAI CCC Dublin 1D/29/7; CCA 72/1949.
[73] Mamie Cadden, see NAI CCC Dublin 1D/29/7; CCA 72/1949.
[74] Mary Kiernan, see NAI CCC Westmeath 1925-1927 1C-90-26; Mary Anne Keane, see NAI CCC Roscommon 1929 1C-94-69; Deborah Sullivan, see NAI CCC Kerry 1929 1C-94-61; Mary Somerville, see NAI CCC Monaghan 1938 1D-60-62; CCA 36/1938.
[75] Elizabeth Hannon, see NAI CCC Westmeath 1925-1927 1C-90-26, and Mary Lenihan, see NAI CCC Cork 1929-1931 1C-94-55; CCA 30/1928.
[76] Elizabeth Doran, see NAI CCC Wicklow 1926 1C-90-28; Catherine Aherne, see NAI CCC Wexford 1929 1C-94-75; Margaret Finn, see NAI CCC Clare 1931 1D-94-54; Ellen Keogh, see NAI CCC Westmeath 1944 1D-27-1; CCA 56/1944.
[77] Kate Owens, see NAI CCC Westmeath 1943 1D-22-84.
[78] Christina Russell, see NAI CCC Dublin 1930 1C-94-52; CCA 24/1930.
[79] Elizabeth and Rose Edwards, see NAI CCC Roscommon 1935 1D-94-20; CCA 13/1935 Elizabeth Edwards; CCA 14/1935 Rose Edwards.
[80] Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History* 37(1), 53-74.

'fair fights' tended not to result in murder convictions.[81] Within the current sample there were implications related to means of killing, evident in how each case was understood. For example, certain cases were considered particularly heinous because of how the victim died. Frances Cox, who murdered her brother by strychnine poisoning, was one of these cases in which method of killing provoked particular comment. The association of poison with murders committed by women, and the framing of such killings as cruelly deliberate was evident in the discourse on the killing and coloured understandings of Frances. Alternatively, the categorisation of gun violence as a male endeavour was evident in the masculinisation of women who killed by shooting such in as the case of Jane O'Brien, or the depiction of Marie Murray as the dominant partner in the shooting dead of Garda Michael Reynolds. The implications for the discursive construction of these women are explored further in Chapter Nine.

Motive

The cases were examined to ascertain the motivations which lay behind the killings. Motivation in the 14 infanticide cases can be linked to the societal censure shown towards illegitimacy and recurrent references to the stigma and shame of illegitimacy were evident in the statements of women convicted of killing their infants. All but one of the infant victims within the sample was illegitimate.

The societal stigma is perhaps evident most blatantly in the official unwillingness to reclassify the killing of an infant by the mother as something other than murder until the Infanticide Act 1949, something which occurred much later than in England and Wales. The shame experienced by the women convicted of the murder of an infant is also evident in the concealed nature of many of the pregnancies within the sample; women frequently did not reveal their condition to anyone, or confided occasionally to female relatives as in the case of Margaret Finn who belatedly confided in her cousin only when her labour pains began.[82] The following chapter provides a more comprehensive analysis of the motivation for infanticide.

For those women who killed adults, motivations can be presented under the banners of financial gain, inheritance and land, family disputes and extra-marital relationships,

[81] Carolyn A Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999).
[82] NAI CCC Clare 1931 1D-94-54; Department of An Taoiseach S.6129; Department of Justice 234/3118.

although many cases demonstrated one or more of these sources of conflict. In one case particularly, the motive was unclear; Agnes McAdam had killed a neighbouring farmer, but it was suggested that the poisoned foodstuffs she had delivered had been intended for a social event with the aim of causing minor sickness in those who attended. Agnes's behaviour, viewed as inexplicable, was therefore attributed to a trivial grudge and the impulses of a 'peculiar' mind.[83]

The cases of Mary Moynihan, Annie Walsh (1925) and Annie Walsh (1929) involved either a suggestion or direct evidence of an extra-marital relationship as motivation for the murder. The presence of a sexual motive could provide further aggravating evidence on the character of the women and the examples of Annie Walsh (1925) and Annie Walsh (1929), in particular, demonstrate the opprobrium reserved for 'unfaithful' women who killed their husbands. The presence of multiple, or confused, narratives of motivation was evident in many cases however, and Annie Walsh's (1925) murder of her husband could equally be understood as a killing for financial gain. Others within the sample who killed for financial gain were Hannah Flynn, whose actions were also the result of a grudge she harboured against her former employers, and Mary Agnes Bernadette Daly, whose family were in straitened financial circumstances when she killed an older woman in an apparent attempt to steal her belongings.

The importance of inheritance and land was evident in the cases of Hannah O'Leary, Jane O'Brien and Frances Cox whose cases were characterised by a narrative in which the dominant motivation was the retention of the family farm or family home at the expense of a male heir. This demonstrated that beyond the killing of infants, the killing of family members was often entwined with larger disputes relating to inheritance and property.

The tensions identified within the current sample are common across other studies also,[84] demonstrating that the family as a site of fatal disagreements often related to property and

[83] NAI CCC Monaghan 1946 1D-29-11; CCA 16/1946; Department of An Taoiseach S.13804; Department of Justice 18/9074A.

[84] As demonstrated in Chapter Three, three broad categories of tension across the late-nineteenth- and early-twentieth-centuries which led to disputes were land, exploitation of labour by parents and the selection of one son to inherit. See, Ciaran McCullagh (1991) 'A Tie That Binds: Family and Ideology in Ireland', *Economic and Social Review*, 22(3), 199-211. Ian O'Donnell adds spousal disharmony to this trio of tensions. O'Donnell also found that 11.6 per cent of homicides in his sample from the 1890s resulted from disputes over land, something he links to the importance of land as a source of security for a people still experiencing the collective trauma of the Famine. See, Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the

of conflict between spouses. These motivations are hardly surprising considering the importance of land in Ireland at this time, Kennedy stated that 'Land, family and Church form a trinity which dominated much of Irish life at least until the 1960s.'[85]

The discrete area of women who kill abusive male partners emerged from the review of the literature on women who kill in Chapter One. It is perhaps surprising given the extensive literature on this cohort of women that issues of domestic violence did not present as a motivating factor within the current sample. The lack of awareness of abuse within the family may have ensured that allegations of victimisation were muted. However, there were secondary discourses of cruelty which emerged from the archives; the cases of the two women who killed their husbands offered possible interpretations grounded in victimisation.

The case of Annie Walsh (1925) presented an alternative narrative of Annie as the victim of Michael Talbot, the man co-convicted for her husband's murder. Talbot had been convicted of common assault on Annie Walsh in 1924;[86] this could have been presented as a narrative of victimisation and could have offered an alternative characterisation of Annie Walsh as vulnerable. Annie Walsh herself actively cultivated this narrative, and in the District Court she used her right to question witnesses to further this characterisation.[87] However, the narrative of Walsh as victim was not accepted. Talbot suggested a mercenary motive for this assault.[88] These allegations ensured that the characterisation of Annie Walsh as victim, and of Michael Talbot as violent aggressor, was not accepted as 'true'.

In the case of Annie Walsh (1929), an acquaintance who petitioned extensively on her behalf cited the difficult circumstances of her marriage. Catherine Lennon recounted 'one of the saddest stories I had ever known,' of Annie, who returned destitute from the US, a widow with three children. In this reduced condition, Lennon writes, Annie had little option but to marry Sonny Dan Walsh. However, she writes that Annie found her position

---

Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History* 37(1), 53-74.

[85] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001) at 6.

[86] NAI CCC Limerick 1925 1C-90-14. Talbot had been sentenced to four months' hard labour.

[87] For example, one witness swore an affidavit that she had seen Annie with a black eye, which Walsh had said was caused by a kick from a cow. When Annie questioned the witness, she asked 'Did I not say it was Mick Talbot gave me the black eye?' Annie also questioned a Guard, asking 'Did you not often see me in William Street Barracks before reporting Talbot?'. See, NAI CCC Limerick 1925 1C-90-14.

[88] Compounding this, a Guard gave evidence that Annie and Edward Walsh had been owed four pounds of compensation as a result of this assault. NAI CCC Limerick 1925 1C-90-14. Deposition of Sergeant Lee McGrath.

difficult, and told Lennon that she would 'rather throw myself in the sea, there is a house with nothing in it, there is land with nothing on it and a business were it twice as good he could drink every penny of.'[89]

Evidence from the trial also suggested an unhappy living situation. Annie referred to her husband as 'a bit queer' and 'strange'.[90] In a statement prior to the trial, Annie said her husband 'had often to be carried into the house from the effects of [poteen].'[91] The victim's sister had also expressed displeasure that Annie and Sonny Dan did not sleep together, or live as a married couple, 'I told her she was not living as a wife towards my brother.'[92] Annie had explained it was because Sonny Dan was 'cranky'.[93] However, these were secondary narratives only, and did not frame discussion in the cases.

Location

Throughout the sample, the profile of killings was rural or semi-rural. In total, 12 of the 26 Irish counties are represented within the sample. From the case studies, this 'rural character' emerged strongly as a culture which was juxtaposed with that of Dublin, evident particularly in the crucible of the courtroom when a Dublin professional elite came crashing into the mores of a rural society. This was perhaps most evident in the case of Annie Walsh (1929), in which the witnesses in the trial were almost all Irish-speakers. Annie Walsh lived in rural County Galway, in an Irish-speaking area in the west of Ireland. Her case demonstrated the clashing of ideas of Irish romanticism, which stemmed from Irish nationalism and the Gaelic Revival, and the inability to comprehend the lived experience of persons who dwelt in such areas. In this clash, the rural was contrasted with the urban, which signified laxity, contagion and alien influences. Eoin O'Sullivan and Ian O'Donnell write that in Ireland:

[89] NAI Department of Justice 234/2599. Letter from Catherine Lennon, 25 July 1929. Catherine Lennon was married to the former Rector of the Aran Isles and knew Annie in this context. In a later letter of 24 June 1932, Lennon called the victim 'a drunkard'.
[90] NAI CCA 16/1929. Evidence of Annie Walsh.
[91] NAI Department of Justice 234/2599. Statement of Annie Walsh.
[92] 'Galway Case Drama' *Connaught Sentinel* (26 March 1929).
[93] ibid.

> [T]he term 'rural' is invested with a range of symbolic meanings which are routinely invoked to articulate particular belief systems and to stress the importance and, often, presumed superiority of rural over urban life.[94]

Even when explicit language barriers were not an issue, 'language' could persist as problematic; this was highlighted during the Trial Judge's charge to the jury in the case of Agnes McAdam: 'you will, of course, remember that considerable allowance must be made for country witnesses in a very strange atmosphere, where they may feel ill at ease, especially with Learned Counsel talking to them sometimes in unaccustomed language.'[95]

The occurrence of murders within this rural idyll prompted some acknowledgement of the seeming discord between this fact and the presumed moral superiority and innocence of Irish rural life. The defence counsel in the trial of Hannah Flynn referenced the John Millington Synge play *The Playboy of the Western World* when he wrote that: 'The only comment to be made on the case is that Synge erred considerably when he published "The Playboy" years ago, instead of keeping it till the present day'.[96]

Only three of the killings took place in Dublin City, and these occurred towards the later end of the date range. O'Donnell has investigated the profile of homicide in Ireland, comparing the decade of the 1890s with the 1990s to gain an impression of change across a century. O'Donnell noted that between these periods, the profile of homicide in Ireland changed distinctly, becoming a more urban phenomenon.[97] Although crime was increasingly occurring in significant volumes in urban areas from the end of the 1800s and the beginning of the 1900s, Brewer et al also note that homicide remained a typically rural offence until later in the century, with the particulars of the offence governed by its rural location so that victims and perpetrators would typically have been known to each other.[98] The rural character of homicide in Ireland throughout the nineteenth- and early-twentieth-

[94] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement: Patients, Prisoners and Penitents* (Manchester University Press 2012) at 269.
[95] NAI CCA 16/1946. Trial Judge's Charge to the Jury.
[96] Department of Justice 18/2769A. Memorandum sent to Kevin O'Higgins from Michael Lennon 1 March 1924. *The Playboy of the Western World* was first performed in 1907. It tells the tale of the intrusion of a stranger into a rural community in the west of Ireland. This stranger recounts how he fled his home after he murdered his father. The play therefore deals with themes of rural Ireland and lethal violence. See, Piers Beirne and Ian O'Donnell (2010) 'Gallous Stories or Dirty Deeds? Representing Parricide in JM Synge's "The Playboy of the Western World"', *Crime Media Culture*, 6(1), 27-48.
[97] Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History* 37(1), 53-74.
[98] John D Brewer, Bill Lockhart and Paula Rodgers, *Crime in Ireland, 1945-1995: 'Here be Dragons'* (Clarendon 1997).

centuries was therefore typical and agrarian homicide 'was one of Ireland's most characteristic crimes'.[99] The rural character of murder is evident also in the preceding discussion of the motives of the killings within the sample. The importance of land, expressed as a stake in the family farm in the case of Hannah O'Leary and Frances Cox, or in the retention of the family home as evidenced in Jane O'Brien's case, framed how these murders were constructed. Rural fundamentalism has informed how Irish society has been understood post-Independence, this related to the paramount importance invested in the family farm, and the implications of this system for family members who would not inherit.[100] O'Sullivan and O'Donnell argued that this mind-set left many 'surplus' family members vulnerable and in precarious positions which contributed to the considerable numbers of persons coercively confined in Ireland post-1922.[101]

An analysis of the locations where killings took place also revealed that the great majority of the killings within the sample occurred either where the convicted women lived or close to where they lived. All but one woman had killed either in her home, or within easy walking distance of it. One exception was Christina Russell,[102] Russell had given birth in the South Dublin Union and the body of the infant had been found some 20 kilometres from where most of her family lived. Evident from this profile of where the killings took place is the fact that the murders committed by women within the sample were 'local'. Many of the women were economically and socially marginalised and without substantial means, they were therefore limited in the distances they could travel. For most women in the sample, the modes of transport available were by foot or in some cases, by bicycle. The court records show that some women took lifts from passing carts, and one woman was accompanied to the train station following her discharge from the County Home. However, the geographical scope of these women's lives was very limited, not only were the killings typically rural, they were also typically committed in a woman's local area.

[99] WE Vaughan, *Murder Trials in Ireland, 1836-1914* (Dublin Four Courts Press 2009) at 16.
[100] Damian Hannan and Patrick Commins, 'The Significance of Small-scale Landholders in Ireland's Socio-economic Transformation, in JH Goldthorpe and CT Whelan, eds, *The Development of Industrial Society in Ireland* (Oxford University Press 1992).
[101] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement: Patients, Prisoners and Penitents* (Manchester University Press 2012).
[102] NAI CCC Dublin 1930 1C-94-52; CCA 24/1930; Department of An Taoiseach S.6096; Department of Justice 234/3332 Christina Russell.

Profile of the Women Sentenced to Death

Age

As shown in Table 4.2, the largest proportion of women sentenced to death was aged in their 20s and a total of 12 women were in their 20s when they were capitally convicted.[103] The median age of women in the sample was 30. These ages reflect age at conviction; in the case of Mary Moynihan, for example, she was aged 22 when convicted but had been 19 at the time the murder was committed.[104]

Number of Women	Age Range
0	16-19
12	20-29
5	30-39
3	40-49
3	50-59
2	60-69

Table 4.2: Age Ranges of Women Sentenced to Death

Some of the women, such as Jane O'Brien, were unsure of their exact year of birth. In other cases, such as that of Elizabeth and Rose Edwards,[105] conflicting ages were given; in these cases the most reliable age was selected, for example the age given most often, or in a majority of official documents.

The age of women sentenced to death became a recurring rationale for commutation of death sentence post-conviction. In seven cases, the age of the woman was cited as a mitigating factor in favour of reprieve. Some women received petitions based on this

[103] In 1922, all persons aged 16 and over could be capitally convicted. In 1939, the Minister for Justice, PJ Ruttledge, wrote to Chief Justice Sullivan asking him to convene a committee of judges to consider recommendations for possible reforms of capital punishment. The committee reported in 1941 recommending a change to Section 131 of the Children Act 1908 by its extension of the definition of young person to include those aged 16 to 18, thereby removing all persons under the age of 18 from death eligibility under Section 103 of the Act. The Department of Justice on receipt of this recommendation noted that Section 29 of the Children Act 1941 had already raised the age limit to 17, it was further noted that 'the Minister thinks no further action need be taken.' The committee of judges had taken considerably longer to produce their recommendations than the Department had originally envisaged. Although their recommendation as to age was more progressive than the 1941 Act, their timing had rendered it a moot point in the view of the Department. See, NAI Department of An Taoiseach S.7788A. Fifteen-year-old Mary Cole was convicted, on 23 March 1928, for the murders of two children within her care; due to her age she was not sentenced to death and was instead detained 'at the pleasure of the Governor General.' See 'Double Murder Trial Ends' *Irish Times* (24 March 1928).

[104] NAI Department of Justice 234/1744.

[105] NAI CCC Roscommon 1935 1D-94-20; CCA 13/1935; Department of An Taoiseach S.7777; Department of Justice 18/885A.

rationale because they were deemed too old, such as 67-year-old Mary Lenihan,[106] or Jane O'Brien, aged 52.[107] Others received such a recommendation because they were deemed too young, such as Elizabeth and Rose Edwards, aged 28 and 20 respectively. It appears there was only a small window in which age could not be proposed as a mitigating factor.[108]

Marriage, Motherhood and Family

Women in the sample were more likely to be unmarried and childless than otherwise. As illustrated in Chapter Three, motherhood held a particularly vaunted status in Ireland post-Independence. Of the sample of 25 women, 14 were unmarried and had no living children. Of this 14, however, seven had been sentenced to death for infanticide.[109] These seven women were therefore possessed of a certain 'tainted' and 'illegitimate' motherhood; in these trials motherhood was referenced as a normative maternal standard which the women had failed to meet. Four of the 14 women who were unmarried and without living children had been described as 'persistent offenders', women who had given birth to illegitimate infants on more than one occasion, such as Kate Owens.[110] Chapter Three also identified the links between 'illegitimate' motherhood, confinement and pathologisation; subsequent chapters address these elements within the current research.

For those eight women who had living children,[111] many appeals sent on behalf of the women petitioning for clemency invoked their motherhood. For example, a petition sent on behalf of Annie Walsh (1929) referenced her 'six very young children.'

> [T]hey are fatherless; the elder children… are deeply attached to their mother, and she to them; and your petitioners are informed that the touching letters of

[106] NAI CCC Cork 1929-1931 1C-94-55; CCA 30/1928; Department of Justice 234/2384.
[107] NAI CCC Wexford 1932 1C-95-73; CCA 9/1932; Department of An Taoiseach S.8653.
[108] In contrast, of 34 men executed post-1922, 10 were aged 25 or younger, including a 19-year-old. See, David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91.
[109] Further, Frances Cox was unmarried and had no living children but she had previously given birth and had a prior conviction for the manslaughter of her infant.
[110] NAI CCC Westmeath 1943 1D-22-84; Department of An Taoiseach S.13383; Department of Justice 18/6678A.
[111] Elizabeth Doran; Mary Lenihan; Mary Anne Keane; Annie Walsh (1929); Jane O'Brien; Mary Somerville; Ellen Keogh; Mary Agnes Bernadette Daly.

> the elder children to their mother both before and since the trial show beyond all doubt that they are longing for her return.[112]

Those women who had young children also had to make childcare arrangements following their arrests. For example, Annie Walsh (1929) received Special Visits while in prison on this matter.[113] Following her arrest, Mary Somerville's three youngest children were sent to the Boys' Home in Dublin;[114] in a petition, Somerville undertook not to interfere with 'the education and upbringing' of these children if released.[115] The importance of 'mothering' emerges in subsequent chapters, for example as a normative maternal standard in discussion of infanticide, as a factor in mitigation, and as a marker of appropriate femininity.

Eleven women in the sample had been, or were at the time of conviction, married. For these 11 women, two were widowed,[116] three lived apart from their husbands,[117] and two had been convicted of the murder of their husband.[118] The three women who ultimately had their capital convictions quashed, Mary Lenihan, Ellen Keogh,[119] and Marie Murray, were married, suggesting that marriage could be considered a protective factor within the criminal justice system. However, in the case of Ellen Keogh, her marriage and her discharge of wifely duties was far from the ideal. Keogh, who had her sentence of death quashed and was reconvicted for the manslaughter of her infant instead, had given birth to an illegitimate child while her husband worked in England. As the case of Ellen Keogh illustrates more generally, the failure of the marriages within the sample to conform to ideal notions of matrimony may explain the presence of such women in the sample. For example, Catherine Aherne continued to live in her parental home following her marriage, which itself had been precipitated by her unplanned pregnancy.[120] Two of these women who had their capital conviction quashed were also among the eight women in the sample

[112] NAI Department of An Taoiseach S.5904. Petition on behalf of Annie Walsh.
[113] NAI Department of Justice 234/2599. Note, 30 December 1929. Walsh was unhappy that her children were in the care of her sister-in-law Kate Walsh, the sister of her murdered husband.
[114] NAI CCC Monaghan 1938; CCA 36/1938; Department of An Taoiseach S.11040; Department of Justice 18/3110A.
[115] NAI Department of Justice 18/3110A. Petition of Mary Somerville, 14 December 1940. Maria Luddy describes this Home as part of the 'philanthropic empire' of Ellen Smyly, in Maria Luddy, *Women and Philanthropy in Nineteenth-Century Ireland* (Cambridge University Press 1995) at 82.
[116] Elizabeth Doran and Mary Somerville.
[117] Mary Anne Keane, Jane O'Brien and Ellen Keogh.
[118] Annie Walsh (1925) and Annie Walsh (1929).
[119] NAI CCC Westmeath 1944 1D-27-1; CCA 56/1944; Department of Justice 18/7448A.
[120] NAI CCC Wexford 1929 1C-94-75; Department of An Taoiseach S.5891; Department of Justice 234/2603.

to have living children suggesting further that marriage *and* motherhood could be constructed as protective factors. In cases of infanticide especially, the ability of married women to conceal paternity, or for deaths of infants in the married family to be passed off as natural, was a protective factor.[121] The greater surveillance, in contrast, of unmarried young women rendered them more likely to fall under notice.[122]

In the case of Marie Murray, tried along with her husband for the murder of Garda Michael Reynolds in 1976, the press imagery tended to eclipse her as an individual, and she was instead understood as one half of a 'young married couple'. Marie was therefore understood through the lens of her marriage and this presentation of them, often framed in romanticised language, provoked some sympathy evident in the views of letter writers.[123]

The older single woman, the 'spinster', represented a marginal identity for women, Seal noted that this status was not normative and signalled a failure to follow a conventional life course of marriage and motherhood.[124] However, particular demographic features of Irish society may also have accounted for the numbers of unmarried and childless women in the sample and may have rendered the status of spinsterhood a more quotidian one;[125] the period that followed the Famine of 1845 to 1850 saw average marriage ages rise and higher levels of non-marital celibacy, this ensured that the 'countryside was populated by lonely bachelors and spinsters,'[126] a trend which persisted to the 1950s. Marriage was an economic decision based on means and circumstances.[127]

Kennedy argued that the sensibilities and rationales behind the trends of high celibacy, low marriage rates, but high marital fertility, which became dominant in the late-nineteenth-

[121] Karen M Brennan, (2013) '"A Fine Mixture of Pity and Justice": The Criminal Justice Response to Infanticide in Ireland, 1922-1949', *Law and History Review*, 31(4), 793-841.
[122] Clíona Rattigan (2008) '"I thought from her appearance that she was in the family way": Detecting Infanticide Cases in Ireland, 1900-21', *Family and Community History*, 11(2), 135-152.
[123] For example in the headlines 'Couple sentenced to die', *Irish Independent* (10 June 1976) and 'Couple face the gallows' *Irish Press* (10 June 1976).
[124] Lizzie Seal (2009) 'Issues of Gender and Class in the Mirror Newspapers' Campaign for the Release of Edith Chubb', *Crime Media Culture* 5(1), 57-78; Lizzie Seal (2009) 'Discourses of Single Women Accused of Murder: Mid-Twentieth-Century Constructions of "Lesbians" and "Spinsters"', *Women's Studies International Forum*, 32(3), 209-218.
[125] Although Maria Luddy noted that concerns about single women living alone informed discussions of the Criminal Law Amendment Bill 1912 and suggested measures on prostitution, suggesting that there was still a stigma attached to unmarried women, Maria Luddy, *Prostitution and Irish Society, 1800-1940* (Cambridge University Press 2007).
[126] Ian O'Donnell (2005) 'Lethal Violence in Ireland, 1841 to 2003: Famine, Celibacy and Parental Pacification', *British Journal of Criminology*, 45(5), 671-695, at 687.
[127] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).

century, originated in rural areas and migrated to urban areas. These trends were more pronounced in rural areas however, as economic rationales were tightly bound with inheritance and the concept of the family farm. In 1901, less than half of women aged 25 to 34 had ever been married, this figure remained unchanged in 1926, demonstrating that marriage rates were low.[128]

The tendency to marry later in life also meant that many women lived for longer periods in the home of their parents.[129] Eleven of the women in the sample lived in the parental home, either with living parents, or with siblings who had inherited the family property. These women tended to be unmarried and childless; 'spinster' sisters and daughters, living at home, most without prospect of future marriage. Jane O'Brien had sold her own home following separation from her husband and had returned to live with her brother in the family home he had inherited. Following her brother's death, her position had become precarious. In cases such as these, in which women were married but separated, their situation could be bleak. This is further illustrated in the case of Mary Anne Keane, who was separated from her husband and virtually homeless when she killed her illegitimate infant.[130]

The falling rates of marriage in Ireland which had followed the Famine persisted into the mid-twentieth-century. By 1951, over half of women aged 15 to 44 were unmarried. The limited prospects for women drove high levels of female emigration. The structure of society, evident in the organisation of rural life around family farms, denied many women the opportunity to have their own home and family.[131]

Occupation and Class

Overwhelmingly, death-sentenced women were drawn from the lower socio-economic class. In rural areas, where the majority of the women lived, this understanding of class was designated 'labouring class' which denoted families either without land of their own

[128] ibid.
[129] Ryan also cites later marriage ages as further contributing to the taboo of sexuality in Ireland. As brothers and sisters remained unmarried and in the family home for decades, and in some cases for all of their life, pre-marital sex was viewed as particularly jarring, see Louise Ryan (2002) 'Sexualising Emigration: Discourses of Irish Female Emigration in the 1930s', *Women's Studies International Forum*, 25(1), 51-65.
[130] NAI CCC Roscommon 1929 1C-94-69; Department of An Taoiseach S.5884; Department of Justice 18/3540.
[131] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).

who were hired to work the land of others, or families who worked their own small parcels of land at near-subsistence level.

Many of the women within the sample were in remunerative employment. The employment histories of women and appraisals of them as 'hard-working' could be presented as evidence in their favour. Two women within the sample, Roscommon sisters Elizabeth and Rose Edwards, were, by contrast, condemned in a Garda Report for their 'shiftlessness' and lack of gainful work: 'The two condemned girls have never been in remunerative employment.'[132] The majority of death-sentenced women worked in occupations which related to traditional female roles. Many worked outside the home as domestic servants or within the family home performing similar functions for no remuneration. Within the sample, 12 of the women had worked as domestic servants at some stage prior to conviction; another four women, despite no evidence of work outside the home, worked in their homes performing duties such as tending to children, food preparation and laundry. Elizabeth Hannon was a domestic servant who had given birth at her place of employment.[133] In the census of 1936, 86,102 women were recorded as domestic servants. A quarter of all adults were listed as 'Home-makers', of which 552,176 were women and 1,301 were men.[134] The prevalence of these roles within the sample then was typical of the employment profile of Irish women more generally.

As well as domestic work, there were also four women within the sample whose occupation was characterised primarily as farmer or farm labourer, one of these women was widowed and worked the farm previously worked by her husband. Another widow also worked as a farm labourer. The other two women whose occupation can be classified as farmer/farm labourer worked the family farm with their brothers. Kennedy writes that widows often inherited and ran family farms, and that in 1926 the census recorded 135,000 widows, over 40 per cent of whom were employed and the largest proportion were employed within farming; this remained almost unchanged in 1951.[135] Kennedy argues that late-nineteenth-century changes in how the employment of women was recorded wiped out the existence of the significant numbers of women who were in remunerative employment or who contributed substantially to the family business.

[132] Department of Justice 18/885A. Garda Report, 2 April 1935.
[133] NAI CCC Westmeath 1925-1927 1C-90-26; Department of An Taoiseach S.5571; Department of Justice 234/2016.
[134] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).
[135] ibid.

The importance of children to the survival of family farms was a feature throughout much of the twentieth-century in Ireland. The economic status of children shifted significantly towards longer periods spent in education and away from the lifeblood of agriculture. However, throughout the sample the importance of children as contributors to the family economy was evident. In rural areas this was chiefly through the labour of sons and daughters on farms. High rates of marital fertility provided a pool of free labour, although within this, daughters had a lower status. Kennedy quoted the Limerick Rural Survey in 1964, that girls were 'favoured by neither father nor mother and accepted only on sufferance.'[136]

The use of the labour of 'surplus' female family members was evident in the circumstances of women within the sample such as Hannah O'Leary, Agnes McAdam and Frances Cox, who all lived in the family home, without significant prospect of inheritance or marriage. The hiring out of children through events known as 'hiring fairs' was also a means by which the labour of children could supplement family incomes. Mary Moynihan, who had worked as a domestic servant in the Horgan household for five years, was hired out by her father and did not know what wage he received for her labour.[137]

Few women within the sample had professional skills training. Two women, Mary Agnes Bernadette Daly,[138] and Mamie Cadden, had trained and practised as nurses. Nursing was, of course, a traditional sphere of female employment, but it required a greater level of officially recognised skills training. Daly, something of a rarity within the sample, had also worked as a nurse in England prior to her marriage.[139] It is, perhaps, no coincidence that Daly and Cadden's cases both occurred later within the sample. They were convicted in 1948 and 1956 respectively, and were both living in Dublin City when their crimes took place. The migration of rural women to urban areas and beyond Ireland was a feature of

[136] P McNabb (1964) 'Social Structure' in J Newman, ed, *The Limerick Rural Survey, 1958-1964* (Muintir na Tíre Tipperary) 193-247, cited in Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001) at 126.
[137] NAI CCA 17/1924. Evidence of Superintendent Peter Fahy.
[138] NAI CCC Unknown Counties 1949 1D-50-42; CCA 68/1948; Department of An Taoiseach S.14430; Department of Justice 170/7622.
[139] This further differentiates Daly, whose family background was more grounded in the Irish middle-class, despite the straitened financial circumstances she was in when she killed Mary Gibbons. Daly trained as an SRN (state registered nurse) in England. See, NAI Department of Justice 170/7622. Psychiatric Report 29 October 1951. This status, as a registered, as opposed to an enrolled nurse, denoted Daly's higher status in nursing. Many Irish nurses emigrated to work in Britain from the mid-twentieth-century; many of these women were denied the opportunity to qualify as an SRN (state registered nurse) and instead worked as an SEN (state enrolled nurse). See, Louise Ryan (2007) '"Who do you think you are?" Irish Nurses Encountering Ethnicity and Constructing Identity in Britain', *Ethnic and Racial Studies*, 30(3), 416-438.

the limiting prospects which existed in these women's local areas.[140] Marie Murray, sentenced to death in 1976, was also atypical through her educational attainment; Murray had worked as a civil servant until her marriage in 1973,[141] Murray was also politically engaged and had been an activist for various causes.[142]

However, these three cases, the only three occurring in Dublin City, and the only three in which the women had acquired professional qualifications, were not the norm. As stated above, the largest occupational representation was domestic service, or of women who worked within the home. However, across occupations, the theme which emerged was that of women who were economically marginalised and living precarious lives, with the majority unskilled or reliant on positions of domestic work.

Religion

All but three of the women in the sample were Roman Catholic. Mary Somerville and Frances Cox were Church of Ireland, and Mamie Cadden, while initially identifying as Roman Catholic, later declared as 'No Religion'. Cadden's resistance to being identified as Catholic is evident in her outburst from the dock following sentence, 'Well, I am not a Catholic. Take that now.'[143]

It is also the case that religion offered many individual women support, in the form of petitions from local priests and religious figures, as well as within the prisons. Women who were reprieved were visited in prison by members of religious congregations and orders and were ministered to by the chaplains of the prison. The prison visiting of charitable organisations, most of which were religious, often provided women with their only outside contact.[144] The chaplains were frequent champions of the reprieved women they met in

[140] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).
[141] Until 1973, a Marriage Bar was enforced across the civil service which excluded married women from employment. See, Evelyn Mahon (1994) 'Ireland: A Private Patriarchy?', *Environment and Planning A*, 26(8), 1277-1296.
[142] Throughout much of the post-Independence period, Irish social policy restricted the access of married women to the workforce. A prohibition on married women working as teachers in national schools and throughout the civil service was introduced in 1932. In 1958, a shortage of teachers forced the reversal of this policy in this area, but married women were precluded from employment in the civil service until 1973. See, for example, Evelyn Mahon (1994) 'Ireland: A Private Patriarchy?', *Environment and Planning A*, 26(8), 1277-1296; Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).
[143] NAI Department of An Taoiseach S.16116. Trial Judge's Charge to the Jury.
[144] The women within the sample were allowed visitors. For example, within the files on Annie Walsh (1929), it was recorded that she could receive one visit every four months for the first eight months of her sentence. Thereafter, she could have one visit every three months, and after a further five month period she could have monthly visits. Women could also apply for 'Special Visits'. See, NAI Department of Justice

prison and took efforts to petition that such women be released to religious-run institutions. Mary Somerville, as the only Protestant woman who was transferred from prison to such an institution, went to the Church of Ireland-operated Bethany Home.[145] Similarly, Frances Cox was supported by Major Acton of the Salvation Army, demonstrating the differential religious supports available to the reprieved women according to their religion.[146] The welfare availed of by women before they entered the criminal justice system also illustrated the minimal State-sponsored welfare and reliance on charitable assistance, according to religious denomination. Since the death of Mary Somerville's husband she had been in receipt of funds from the County Monaghan Protestant Orphan Aid Society.[147] The religious divide in Ireland is further evident in the case of the protestant Frances Cox, who had been engaged to marry a local man, 'She is a Protestant, and it appears that she was arranging to marry a Catholic against the wishes of her family.'[148]

The influence and importance of the Catholic Church in Ireland,[149] both in terms of its moral teachings and as a social 'superstructure',[150] is significant. Mahon noted that 'One has to examine women's lives to appreciate the significance of Catholicism,'[151] the influence of Catholicism on the lives of women in the current sample demonstrates this argument, in the moralism of discourses on illegitimacy, the sexuality of women and the network of religious-run institutions to which women were released from prison.

Previous Convictions

Of 25 women, seven had been previously convicted: Annie Walsh (1929),[152] Elizabeth and Rose Edwards,[153] Kate Owens,[154] Frances Cox,[155] Mamie Cadden[156] and Marie Murray.[157]

234/2599. Note, January 1930. However, despite this, some women received no visitors; the reasons for this, which were elaborated in the archives, were lack of resources to travel to Dublin or family conflict and shame.

[145] NAI CCC Monaghan 1938 1D-60-62; CCA 36/1938; Department of An Taoiseach S.11040; Department of Justice 18/3110A.

[146] NAI Department of An Taoiseach S.14689B.

[147] Department of An Taoiseach S.11040. Garda Report, 10 December 1938.

[148] NAI Department of An Taoiseach S.14689B. Memorandum, 4 March 1957.

[149] The 1937 Constitution of Ireland contained an article, Article 44.1.2, which stated the special position of the Catholic Church. This provision was removed by referendum in 1973.

[150] Evelyn Mahon (1994) 'Ireland: A Private Patriarchy?', *Environment and Planning A*, 26(8), 1277-1296.

[151] Evelyn Mahon (1994) 'Ireland: A Private Patriarchy?', *Environment and Planning A*, 26(8), 1277-1296, at 1978.

[152] NAI Department of Justice 234/2599.

[153] NAI CCC Roscommon 1935 1D-94-20.

[154] NAI Department of An Taoiseach S.13383A.

[155] NAI Department of An Taoiseach S.14689A

Table 4.3 demonstrates the significant range of offences from minor infractions related to the distillation of home-made alcohol, to manslaughter.

Name	Number	Details
Annie Walsh (1929)	1	26 June 1928 'keeping spirits unlawfully made and distilled'
Elizabeth Edwards	1	19 Dec 1933 'larceny of turkeys'
Rose Edwards	1	19 Dec 1933 'larceny of turkeys'
Kate Owens	1	25 April 1934 'concealment of birth'
Frances Cox	1	22 July 1949 'manslaughter of her infant'
Mamie Cadden	3	5 May 1939: 'conspiracy to abandon a child' and 'child abandonment' 27 April 1945: 'intent to procure a miscarriage'
Marie Murray	1	July 1974: 'receiving stolen money'

Table 4.3: Previous Convictions

The sentences imposed ranged from fines, in the case of Annie Walsh (1929) and Elizabeth and Rose Edwards, to being bound over to keep the peace in the case of Kate Owens. Marie Murray was given a two-year suspended sentence in the Special Criminal Court for her July 1974 conviction for receiving stolen money, while Mamie Cadden was sentenced to 12 months and five years' imprisonment for her 1939 and 1945 convictions respectively. Frances Cox was discharged on recognisances to keep the peace for two years following her conviction for the manslaughter of her infant, but immediately after her trial, she was rearrested for the murder of her brother, for which she would ultimately be convicted and sentenced to death.

The fact of a woman's prior conviction could render her a more likely target for suspicion and surveillance. The Garda Report on Elizabeth and Rose Edwards noted that:

> At the time, it was generally expected that the larceny episode was merely the forerunner of other inevitable incursions into crime, and, unfortunately, the popular opinion of the day proved to be only too well founded.[158]

[156] 'Nurse Cadden Found Guilty' *Irish Times* (6 May 1939); 'Woman Found Guilty' *Irish Times* (28 April 1945).
[157] 'Couple Sentenced to Die' *Irish Independent* (10 June 1976). Marie Murray had also, in December 1972, been convicted of an offence under the Conspiracy and Protection of Property Act for which she was given a suspended sentence; however on appeal this was quashed.
[158] Department of Justice 18/885A. Garda Report, 2 April 1935.

In the case of Mamie Cadden also,[159] her previous convictions relating to child abandonment and intent to procure a miscarriage meant that suspicions were immediately brought to her door when the body of Helen O'Reilly was found on Hume Street, following her death as a result of an abortion procedure. Cadden's notoriety and association with other crimes of a similar hue were instrumental when piecing together the circumstantial evidence during her trial for murder. She was possessed of a devalued reputation, and, as Sandra McAvoy writes it was this reputation, 'as much as her proximity to the spot where the body was found, [which] made her the chief suspect.'[160] It is evident then that a woman's prior conviction tended to bring her within the scope of Garda notice for other offences.

Conclusion

Twenty-five women were sentenced to death in Ireland post-Independence. This chapter has attempted to provide an overview of these cases. Of these 25 condemned women, only one was executed, while 21 were reprieved and three had their verdict altered in some way.

The number of death sentences handed down to women was clustered in the period 1922 to 1929. Following this peak, there was a sudden and sustained drop. This trend for women is distinct from the trend for men, and the differentiation of this 'female' trend from the general, or androcentric trend, has suggested the need for an understanding of capital punishment in Ireland that takes a gendered perspective. It has presented an argument for an alternative history of capital punishment and has reinforced the need to reintroduce a gendered analysis into studies of punishment.

The two most significant developments relating to women and capital punishment post-1922 were the Infanticide Act 1949, and the Criminal Justice Act 1964. The singular relevance of the 1949 legislation to women further illustrates that capital punishment must be considered from a gendered perspective.

[159] NAI CCA 36/1956; Department of An Taoiseach S.16116; Department of Justice 18/3562.
[160] Sandra McAvoy, 'Before Cadden: Abortion in Mid-Twentieth-Century Ireland', in Dermot Keogh, Finbarr O'Shea and Carmel Quinlan, eds, *Ireland in the 1950s: The Lost Decade* (Mercier Press 2004) at 147.

Fewer women than men were capitally convicted, and fewer women than men were executed in Ireland post-Independence.[161] Comparing cases of persons sentenced to death between 1923 and 1964, O'Donnell and Doyle found that of 68 men sentenced to death, 34 were executed. In this same period, they cite just 22 women were sentenced to death and only one was executed.[162] Doyle and O'Donnell also noted that the median period of time spent in prison by reprieved women was three and a half years, while reprieved men spent a median period of seven and a half years in prison.[163]

However, the conclusion that women were the recipients of greater leniency than men is a complicated one and is questioned herein. Notions of leniency are questioned by inclusion of the cases of those women who were released from prison to religious-run, semi-penal sites of confinement. Of 21 reprieved women, 11 were conditionally discharged from prison to religious-run institutions. This process muddies the narrative that women were treated more leniently. Indeed, in many cases, leniency could be reimagined as paternalism.

The sample of 25 women has corresponded with the research on homicide which has demonstrated that the profile of killings committed by women is different to the profile of male killing.[164] Nineteen women killed within the family, four other women killed persons known to them. Only two of the 24 victims in the sample were unknown to the women. The sample also adheres to research which positions the killing of an infant as a 'female' homicide.[165] Fourteen women were sentenced to death for infanticide, while 11 had murdered adults. For those women who killed adult men, analysis suggests that their cases tended to trigger a more agonised consideration of commutation, and that these cases

[161] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91. This is true for the period beginning at Independence in 1922 and continuing until the Criminal Justice Act 1964, until which time the mandatory sentence for murder was death. It is also true for the period from the Criminal Justice Act 1964 until the Criminal Justice Act 1990, during which period only those persons convicted of capital murder were sentenced to death. Therefore, until the reforms of 1964 the finding that women were less likely to be capitally convicted than men is the same as saying that women committed fewer murders than men.

[162] Doyle and O'Donnell do not include within their figures the cases of persons sentenced to death who subsequently had their verdict altered, which explains the disparity between numbers. David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91.

[163] ibid.

[164] Enda Dooley, *Homicide in Ireland: 1972-1991* (Stationery Office 1995); Enda Dooley, *Homicide in Ireland: 1992-1996* (Stationery Office 2001); Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History* 37(1), 53-74.

[165] See Chapters One and Three for more on infanticide as the quintessential 'female' homicide.

attracted greater depths of official censure. This suggests the greater opprobrium for women who 'upset' gender relations. This opprobrium was particularly noted in cases of women who killed men for personal gain, or in cases of women who killed their husbands for sexual motives.

The most common motivations were: the stigma of illegitimate motherhood, and issues of land, inheritance, family conflict and extra-marital relationships.[166] For women convicted of infanticide, the shame of giving birth outside marriage offered strong motivation. For women who killed adults, many of these motivations related to the importance of land and the presence of 'rural fundamentalism'.[167] The rural or semi-rural nature of most of the killings also exposed a cultural clash between rural Ireland and the urban professional elite, which manifested during the criminal trial process and in the commentary of professional legal actors. The profile of the killings also marked out the limited sphere of women's movement and lives.

The condemned women were more likely to be unmarried than married and were also more likely to have no living children. Fourteen had never been married and 17 had no living children. However, many had either been convicted of infanticide or made admissions of having previous infants who were either still-born or who died following childbirth. Even for those women who were married, separation from husbands or widowhood often ensured precarious social standing. Those women who had been married did not represent ideal templates of matrimony. Of 11, two had murdered their husbands and three were living apart from their husbands. Many of the women lived in the family home with their parents. Most had few prospects of future marriage or inheritance.

The women sentenced to death in Ireland post-Independence were therefore marginalised and lacking in power and influence. They were drawn from the lower socio-economic classes and most were understood as being of the 'labouring class'. Many were economically dependent on their family for survival, few had any legal interest in land or property, and very few were qualified for positions of skilled work. Many worked as domestic servants, either outside the home or in the family home without remuneration. Their roles were therefore constructed around domesticity. Demonstrating the rural nature

[166] Although as noted in the chapter, there was little evidence of women killing abusive male partners.
[167] Damian Hannan and Patrick Commins, 'The Significance of Small-scale Landholders in Ireland's Socio-economic Transformation, in JH Goldthorpe and CT Whelan, eds, *The Development of Industrial Society in Ireland* (Oxford University Press 1992).

of the profile, four women worked as labourers or on the family farm. The three women who lived in Dublin had official skills training and occupied more professional roles. However, these women had all moved from rural Ireland to Dublin, further underlining the lack of opportunity for such women in their local communities. These three cases all occurred later in the sample also, suggesting the shift in the profile of killings over time.

The overview of women sentenced to death in Ireland post-Independence, presented herein, has provided a descriptive and contextualised account of the cases of the 25 condemned women. The findings identified herein are expanded within the subsequent chapters, dealing with the key themes of Infanticide, Mercy, Confinement, Pathology, and Appropriate Femininity. These chapters provide detailed and comprehensive presentation and analysis of the findings.

Chapter Five

Infanticide

Introduction

Fourteen of the women within the sample were convicted and sentenced to death for infanticide; this was the most common offence for which women were capitally convicted. The infanticide cases can therefore helpfully be considered as a discrete cohort within the wider sample.

This chapter outlines the profile of women convicted of infanticide, elaborating on the distinctive nature of infanticide when understood as a capital crime. The chapter then exposes the gaps which existed throughout this period between the law as officially stated and the relied-upon assumptions about the treatment of infanticide, and it examines the ways in which infanticide existed as a capital offence in a symbolic fashion only. The official leniency shown to women convicted of infanticide was a defining feature throughout. However, the chapter also investigates how the prosecution of infanticide was inextricably connected with themes of illegitimacy and class.

Infanticide in Ireland has been researched by a number of scholars whose work has contributed hugely to the corpus of knowledge on the incidence of infant murder throughout the nineteenth- and twentieth-centuries. Academics such as Elaine Farrell,[1] Clíona Rattigan,[2] and Karen M Brennan[3] have produced necessary and insightful works following extensive archival research. Their work has enriched the current research and informs the analysis of infanticide cases within the current sample; a review of this work is

[1] Elaine Farrell (2008) '"The Fellow Said it was No Harm and Only Tricks": The Role of the Father in Suspected Cases of Infanticide in Ireland, 1850-1900', *Journal of Social History*, 45(4), 990-1004; Elaine Farrell (2012) '"Infanticide of the Ordinary Character": An Overview of the Crime in Ireland, 1850-1900', *Irish Economic and Social History*, 39(1), 65-72.

[2] Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012); Clíona Rattigan (2010) '"Half mad at the time": Unmarried mothers and infanticide in Ireland, 1922-1950', in Catherine Cox and Maria Luddy (eds) *Cultures of Care in Irish Medical History* (Palgrave Macmillan 2010); Clíona Rattigan (2008) '"I thought from her appearance that she was in the family way": Detecting Infanticide Cases in Ireland, 1900-21', *Family and Community History*, 11(2), 135-152.

[3] Karen M Brennan (2013) '"A Fine Mixture of Pity and Justice": The Criminal Justice Response to Infanticide in Ireland, 1922-1949', *Law and History Review*, 31(4), 793-841; Karen M Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.

outlined extensively in Chapter Three. The legal status of infanticide is outlined in Chapter One.

Although not a separate offence in Ireland until 1949, the murder of an infant was generally referred to in both press and official documentation by the specific term 'infanticide'. The deployment of a discrete terminology for the murder of an infant and the preference for terms such as 'infanticide' suggest an offence considered apart from murders generally. One press report which listed cases due for hearing noted that 'There are in all 12 cases of murder' and went on to include 'In addition there are two cases of infanticide'.[4]

Cases

Fourteen women were sentenced to death between 1922 and 1949 for the murder of an infant. Infanticide therefore constituted the majority of cases within the sample of 25 women. Two of these women, Mary Lenihan and Ellen Keogh, subsequently had their verdict altered: Mary Lenihan was ultimately acquitted at her third trial and Ellen Keogh later pleaded guilty to manslaughter. Eleven of the 14 women had killed their own infant, and three women were convicted of killing an infant within their family.

As Table 5.1 shows, most of the infants in the sample, eight of the 13, were newborns and had been killed almost immediately following birth. The infants of Mary Anne Keane and Christina Russell both lived for approximately 19 days, the infant of Elizabeth Edwards lived for approximately two weeks, while the infants of Elizabeth Doran and Mary Kiernan lived for 12 days.

Name	**Date of Birth**	**Date of Death**	**Age at Death**
Elizabeth Doran	3 March 1926	15 March 1926	12 days
Elizabeth Hannon	21 Aug 1927	21 Aug 1927	Newborn
Mary Kiernan	14 Sep 1926	26 Sep 1926	12 days
Mary Lenihan	1 Jan 1929	1 Jan 1929	Newborn
Mary Anne Keane	11 Feb 1929	2 March 1929	19 days
Deborah Sullivan	14 Feb 1929	14 Feb 1929	Newborn
Catherine Aherne	30 March 1929	30 March 1929	Newborn
Christina Russell	17 Aug 1930	5/6 Sep 1930	Approx. 19 days
Margaret Finn	17 June 1930	17 June 1930	Newborn

[4] 'A Lengthy Calendar' *Irish Independent* (19 October 1926).

Elizabeth and Rose Edwards	2 Oct 1934	16/17 Oct 1934	Approx. 14 days
Mary Somerville	11 July 1938	11 July 1938	Newborn
Kate Owens	7 April 1943	7 April 1943	Newborn
Ellen Keogh	8 Dec 1943	8 Dec 1943	Newborn

Table 5.1: Age of Infant Victims

Four women within the sample went into labour alone and gave birth unaided.[5] Women who gave birth alone, without skilled assistance, were often recommended to mercy explicitly on these grounds.

The conflicting accounts given in Catherine Aherne's case demonstrate the desirability of conforming to this sympathetic profile. Accounts of the circumstances of the birth changed considerably from an early narrative in which the infant had lived in the family home for a day, to Catherine's evidence at trial in which she said she had given birth alone in a field. In the revised account, Catherine said the infant 'only lived a few minutes after being born'.[6] Catherine Aherne's account of how the infant died also suggested naiveté and helped to construct her as inexperienced, by her claim that 'I thought I was doing good by shaking it.'[7] In contrast to this, her young brother's first statement claimed the infant had been born on Saturday, and that he had seen his mother with the child in her arms; when he returned to his house on Sunday the infant was gone and his mother had asked him not to tell anyone.[8] This alternative series of events suggested collusion between family members, but the final version of the story, in marked contrast, presented a woman deserving of compassion.

Five of the women within the sample gave birth in some form of institution, either County Homes, or the South Dublin Union, as shown in Table 5.2 below.

Name	**Institution**
Elizabeth Doran	Rathdrum County Home
Mary Kiernan	Mullingar County Home
Mary Anne Keane	Roscommon County Home
Christina Russell	South Dublin Union
Elizabeth Edwards	Roscommon County Home

Table 5.2: Women who gave Birth in Institutions

[5] Elizabeth Hannon, Catherine Aherne, Deborah Sullivan and Kate Owens.
[6] NAI Central Criminal Court (hereinafter 'CCC') Wexford 1929 1C-94-75. Statement of Catherine Aherne, 17 April 1929.
[7] NAI CCC Wexford 1929 1C-94-75. Statement of Catherine Aherne, 20 April 1929.
[8] NAI CCC Wexford 1929 1C-94-75. Statement of Davy Nolan, 19 April 1929.

From the above, the cross-over between the age of the victim at death and those infants born in institutions becomes evident; women who gave birth in an institution did not have the opportunity to kill their infants until they were discharged, therefore infants born in institutions lived for longer. In turn, such cases were considered more deliberate and more serious.

Although secrecy prevailed around illegitimate pregnancies, when women did confide in others they tended to confide in female relatives. The three women convicted of the murder of an infant which was not their own were all related to the mother. Mary Lenihan had been convicted of the murder of her 18-year-old granddaughter's illegitimate infant, Rose Edwards for the murder of her sister's illegitimate child, and Mary Somerville murdered the illegitimate child of her 18-year-old daughter Annie. The involvement of female relatives in these cases demonstrated the likelihood that an unmarried pregnant woman was more likely to confide in a female relative; for example, Margaret Finn had confided in her cousin Bridget Crowe when she began to experience labour pains.[9] Christina Russell had also confided in her sister Katie.[10] In some cases, such as that of Christina Russell and Elizabeth Edwards, the sister of the pregnant woman made the arrangements for entrance to County Homes or Unions in which the baby could be born away from the notice of the rest of the family. Only one woman, Ellen Keogh, appears to have given birth with the father of the infant present.

The profile of a 'typical' woman convicted of infanticide which emerges from the work of other academics presented in Chapter Three shares some similarities with those women within the current sample. Table 5.3 outlines the age on conviction, occupation and marital status of the 14 women convicted of infanticide. The median age of women within the sample was 28, two years younger than the median age for all women sentenced to death.[11]

Name	**Age**	**Occupation**	**Marital Status**
Elizabeth Doran	40	Farm labourer	Widowed
Elizabeth Hannon	30	Domestic servant	Unmarried
Mary Kiernan	22	Worked in home	Unmarried
Mary Lenihan	67	Worked in home	Married
Mary Anne Keane	23	Formerly domestic	Married but living

[9] NAI CCC Clare 1931 1D-94-54.
[10] NAI Court of Criminal Appeal (hereinafter 'CCA') 24/1930.
[11] The median age of the *mothers* of the 13 infant victims within this sample is 26.

		servant	apart
Deborah Sullivan	21	Domestic servant	Unmarried
Catherine Aherne	26	Formerly domestic servant	Married but living apart
Christina Russell	28	Domestic servant	Unmarried
Margaret Finn	25	Domestic servant	Unmarried
Elizabeth and Rose Edwards	28 and 20	No employment	Unmarried
Mary Somerville	50	Farmer	Widowed
Kate Owens	36	Formerly domestic servant	Unmarried
Ellen Keogh	40	Worked in home	Married but living apart

Table 5.3: Women Sentenced to Death for Infanticide

Seven of the 14 women worked as domestic servants either when the offence was committed or at some time prior to this. Of the 14 women, seven were unmarried, but only one woman was married and living with her husband at the time the offence was committed. Of the 13 victims in the sample, 12 were illegitimate; only the infant of Catherine Aherne was legitimate but she had become pregnant while unmarried.

Mercy

Motherhood and lethal violence is inevitably linked with the theme of mercy. Of the 14 women sentenced to death for murder, one ultimately had her conviction quashed, another was subsequently convicted of manslaughter, and 12 women were reprieved and their sentences commuted to penal servitude for life. The practice of commutation in cases of infanticide had assumed the status of precedent, evident in the case of Mary Kiernan in which it was held that 'The Department of Justice strongly recommend that the sentence should not be carried out and state that it would be against all our precedents to do so.'[12] This precedent had become stone-clad over decades.[13]

The dichotomy between the status of infanticide as legally indistinct from murder and the inevitable commutation of sentence, inevitably created tensions between the legal and the social meaning of infanticide. That this dichotomy was resolved through the default

[12] NAI Department of An Taoiseach S.5195. Memorandum, 4 November 1926.
[13] For example, Farrell notes that of the 29 women sentenced to death for infanticide in the second half of the nineteenth-century, all were reprieved. Elaine Farrell (2012) '"Infanticide of the Ordinary Character": An Overview of the Crime in Ireland, 1850-1900', *Irish Economic and Social History*, 39(1), 56-72.

application of leniency to such cases was not a comfort to those women whose ignorance of such matters left them fearful for their lives. Mary Kiernan, convicted of the murder of her child in 1926, was quite deaf and had not heard the verdict as it was delivered in the courtroom. When counsel delivered this news to her in the cells he reported that, 'She broke down somewhat and said she did not think they would hang her when it was the first time.'[14]

A Department of Justice 'working rule' from the late-1920s provided official guidance on procedures for women convicted of infanticide:

> As a working rule in infanticide cases I think that the mother convicted should be kept in prison for a period of two years and then placed in a home as has been in the case of Deborah Sullivan. The latter served only a short time in prison but she was a very exceptional case. Each case therefore must be examined on the merits, in some cases the above mentioned period may have to be abridged in others extended. It applies only to average cases.[15]

In the case of Elizabeth and Rose Edwards a similar practice was noted in the mid-1930s:

> It has been the practice in infanticide cases during the past 5 or 6 years, to consider each case when the prisoner has been in custody for about two years with a view to her discharge on licence to a Home.[16]

Once sentence of death had been secured, rationales for mercy were immediately sought. The rationales given for mercy in cases of infanticide typically included the age of the woman and the circumstances of the birth, such as the case of Elizabeth Hannon in which it was stated that 'Infanticide took place immediately after birth.'[17] Many of the infanticide cases attracted considerable sympathy. The recommendation to mercy, while drawing on age and circumstances of the birth, could also indicate perceived frailty through framing the death sentence as injurious to the mental well-being of the women. Justice O'Byrne, in his remarks to the Department on Mary Kiernan's case, endorsed commutation because, in

[14] NAI Department of An Taoiseach S.5195. Letter from Michael Lennon to Kevin O'Higgins, 18 March 1927.
[15] This 'working rule' was found on various files within the archives, see NAI Department of Justice 234/2016 (Elizabeth Hannon); Department of Justice 234/2603 (Catherine Aherne); Department of Justice 234/3332 (Christina Russell).
[16] NAI Department of Justice 18/885A. Minutes.
[17] NAI Department of Justice 234/2016. Memorandum, 15 December 1927.

his view, it was a case, 'in which the strain of a capital sentence, if continued for any length of time, may have serious results on the physical and mental health of the prisoner.'[18] The desire to provide rationales for mercy post-conviction meant that many women had sentence commuted very quickly, such as Margaret Finn and Christina Russell whose sentences were commuted just days after conviction. Commutations proceeded almost as a matter of course, aided by the depiction of the women as pitiful and vulnerable.

While it was considered just to capitally convict these women, it was unthinkable that this verdict would be carried through to logical outcome. The Trial Judge could simultaneously view the guilty verdict in the trial of Elizabeth Hannon as 'very proper' while also endorsing the jury's recommendation to mercy.[19] In his letter to the Department of Justice, the Trial Judge further noted that he and the jury had 'no alternative' but to find Hannon guilty and sentence her to death.[20] An official memorandum on Hannon's case recorded that 'Mr Justice Johnston "entirely endorses" this recommendation [to mercy] and is strongly of the opinion that the sentence ought to be commuted.'[21] These dichotomous views were not held alone by the judiciary; Mary Kiernan's defence counsel noted that 'The evidence tendered at the trial certainly justified no other course on the part of the prosecution save that of trying her on the capital charge.'[22] He concluded that it was, 'a proper verdict, I must confess.'[23] In this sequence of events, cognitive dissonance prevailed and the death sentence presented something of a legal fiction.

Throughout the period under review there was little evidence of agitation for change to the law on infanticide. An editorial in the *Irish Times*, following the reprieve of sisters Elizabeth and Rose Edwards, was critical of Irish attitudes on supposed moral failings:

> We do not advocate leniency towards infanticide. We hold, however, that one of its chief causes is the cruel and often hypocritical attitude of Irish public

[18] NAI Department of An Taoiseach S.5195. Memorandum, 4 November 1926.
[19] 'Woman Sentenced to Death in Dublin' *Irish Independent* (13 December 1927); NAI Department of An Taoiseach S.5571.
[20] NAI Department of Justice, 234/2016. Letter from Justice Johnston, 12 December 1927.
[21] NAI Department of An Taoiseach S.5571. Memorandum, 15 December 1927.
[22] NAI Department of Justice 234/1491. Letter from Michael Lennon to Kevin O'Higgins, 18 March 1927.
[23] NAI Department of Justice 234/1491.

> opinion, especially in the rural areas and small towns – towards moral lapses, and we hold that such intolerance is the chief of all crimes.[24]

The lack of tolerance in such matters is explicitly linked to infanticide. However, as with the dissonance evident in the attitudes of some Trial Judges, the newspaper editorial distances itself from any suggestion that the law should be reformed.

There were some voices calling more explicitly for reform of the law itself. Following the conviction of Elizabeth Hannon in 1927, the Religious of Society of Friends wrote to the Minister for Justice to enquire whether legislation would be introduced which removed the necessity of sentencing these women to death. The Department of Justice responded that 'The advisability of introducing legislation to deal with the crime of infanticide is at present under discussion between the Minister for Justice and the Attorney General.'[25]

However, sustained attention was not diverted to possible amendments until the late-1930s. In April 1939, the Minister for Justice approached the Chief Justice and invited him to convene a committee of judges which would produce a report with suggested proposals for the reform of capital punishment.[26] While abolition was explicitly removed from the remit, one suggested area of reform was the possibility of downgrading infanticide from its status as a capital offence. When the committee finally delivered their report in 1941, this formed one of its few recommendations. The conservative nature of the proposals disappointed the Secretary at the Department of Justice, Stephen Roche, who noted that the suggested reform amounted to little more than 'the reconciliation of the law with common-sense'.[27] Roche was critical of the perceived conservatism of the judiciary in this manner, suggesting that 'reform has always been delayed too long and … the Judges have had a good deal of responsibility for that delay.'[28] Roche viewed the reform of infanticide as cosmetic; however, his remark that 'such women are never, in recent years, charged with murder'[29] would have been of little comfort to the cases of Mary Somerville, Kate Owens or Ellen Keogh, all sentenced to death between 1938 and 1944.

---

[24] 'Reprieve' *Irish Times* (20 May 1935).
[25] NAI Department of Justice 234/2016. Letter from Religious Society of Friends, 15 December 1927, Department response, 21 December.
[26] These records are contained within NAI Department of An Taoiseach S.7788A.
[27] NAI Department of An Taoiseach S.7788A. 25 August 1941.
[28] ibid.
[29] ibid.

Roche was also dubious as to the seemingly arbitrary limits of the proposed reforms, he branded as 'unreal and hypocritical' the idea that a woman who killed her infant before the age of 12 months would be spared but that other equally deserving cases would remain open to murder charges, such as a mother who killed her child a year and a day after the birth. Roche also recalled the case of Rose Edwards, and noted that Rose would still have been liable for a murder charge as she had been convicted of the murder of her sister Elizabeth's infant. Roche went further in his criticism, noting that even the substitute of penal servitude for life in such cases was a fiction, as women were most often released after a number of years.

However, there was not universal acceptance that infanticide should be considered as a separate offence distinct from murder, evident from notes made by the Department of Local Government and Public Health, which suggested that unease remained. The writer argued that only women suffering from the medical condition of puerperal insanity should be afforded differential treatment. Beyond this diagnosis he questioned whether the killing of an infant was different from other killings:

> If the killing of a helpless baby is as serious a crime as is the killing of an adult, I do not think the baby slayer ought to be given any special consideration. In making this submission I am mindful of the fact that the mother of an unwanted baby is sometimes a hardened sinner who appears to kill with full deliberation. It can, of course, always be argued that she had not fully recovered from the effect of giving birth to her child.[30]

The primary rationale underpinning the necessity of reform was identified by Brennan as the need to realign the law with practice, with humanitarian motivations as a secondary factor.[31] In the 1940s, the public was largely inured to the peril of a woman sentenced to death for the offence of infanticide, and were aware that the outcome would almost inevitably be commutation. The resolution of the tension between the law and practice, therefore, motivated the reforms. The discussions indicate considerable sympathy in some quarters however, beyond the logistical rationale of aligning law and practice. Despite this,

[30] NAI Department of An Taoiseach S.7788A. Department of Local Government and Public Health memorandum relating to Insanity as a Defence in Criminal Cases and Infanticide, 2 February 1944.
[31] Karen Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.

it is also evident that some remained reluctant to remove infanticide from within the scope of murder; this was particularly true in those cases which presented as more serious.

Aggravating Features

The tension which existed between the law and the procedures designed to ensure leniency was made most explicit in the aggravated cases within the current sample. The differential profile of women prosecuted for infanticide-offences in the work of academics such as Farrell, Brennan and Rattigan in comparison to the current cohort is the focus herein on cases in which murder convictions were secured. Ryan notes that from analysis of the press reporting on infanticide in the 1920s, it would seem that infanticide was a frequent occurrence;[32] however only a minority of suspected infanticide cases ultimately concluded with a murder conviction and the mandatory death sentence, while the great majority were disposed of by way of lesser charges such as concealment of birth or manslaughter.[33] The death sentence may have been symbolic but its application to a minority of cases signalled that those cases were somehow different.

The cases in the current sample had been explicitly denied leniency at an earlier decision-making stage,[34] they are cases which demonstrated particular aggravating factors in the mind of the Attorney General. Further, the role of the Trial Judge in foreclosing the possibility of conviction for a lesser offence may also have played a role. Each case also presents a decision by a jury to convict on the most serious charge.

In the case of Elizabeth Hannon, medical evidence offered some doubt on the question of whether the infant had been born alive and defence counsel argued that Elizabeth should be convicted of concealment only. The Trial Judge let the fact of whether the child had been

[32] Louise Ryan, 'The Press, The Police and Prosecution: Perspectives on Infanticide in the 1920s', in Diane Urquhart and Alan Hayes, eds, *Irish Women's History* (Irish Academic Press 2004).
[33] Of 71 suspected infanticide cases between 1900 and 1921, only three were convicted of murder, see Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012). Of 160 infanticide cases before the Central Criminal Court from 1924 to 1949, 124 were convicted of a lesser charge, and 26 were acquitted, see Karen M Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.
[34] In this manner, the women within the sample were discursively produced as capitally convicted infanticide cases. Their status was by no means inevitable, considering they represented only a small minority of suspected infanticides. However, Judith Butler's deconstruction thesis can expose the hidden processes through which these women were understood as 'aggravated'. An understanding of the contingent nature of their capital convictions can expose the processes and rationales which motivated this and can highlight the historical specificity of each case, see Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990/2000).

born alive go to the jury, essentially allowing them to bring in a finding of guilt on the lesser charge. The jury chose to convict Elizabeth of murder.[35] Further complicating the narrative, the Trial Judge said that if Hannon had instead been convicted of concealment of birth he would have passed a sentence of six months.[36]

For the 14 women within the current sample, it can therefore be surmised that their cases provided examples of particular aggravating features in the mind of the Attorney General, the Trial Judge, or the jury. From the cases, an alternative profile of an infanticide case emerges. The aggravating features included the marital status of the women and the fact that the infant was illegitimate. As mentioned above, 12 of the 13 infants were illegitimate and the pregnancy of Catherine Aherne had precipitated her marriage while heavily pregnant. Married women living with their husbands could more easily pass off infant deaths as natural,[37] however in the current sample the marital status of the women is telling. Even for those women who were married, such as Mary Anne Keane, there was no possibility of passing the infant off as legitimate. In Keane's case, her husband had thrown her out when he realised she was pregnant with another man's child.[38]

Whether the killing could be viewed as deliberate also strongly influenced how the women were judged, as evidenced by the telling comment on the file of Catherine Aherne which noted that 'no preparation' was made for birth.[39] Ellen Keogh's experience in childrearing was also referenced in the prosecution argument that her failure to prepare clothing or a 'handy woman' for the baby suggested that her intention all along had been to acquiesce in John Mitchell's plan to kill the child, 'I am suggesting, because you knew the fate that was intended for this child, you didn't take the slightest interest in it.'[40]

To this list must be added the age of the women; a woman's age could be linked to understandings of her agency and experience, older women could not be discounted as

[35] NAI Department of An Taoiseach S.5571; 'Woman Sentenced to Death in Dublin' *Irish Independent* (13 December 1927).
[36] NAI Department of Justice 234/2016. Letter from Justice Johnston, 12 December 1927.
[37] Karen Brennan wrote that 'It is possible that infanticide by married women was more common than the records suggest, but that it largely remained undetected. The offense may have been so closely associated with illegitimacy that an infant death within the married family did not attract suspicion and, in cases in which there was no evident violence on the body and no obvious motive, could easily be described as a natural death.' Karen M Brennan (2013) '"A Fine Mixture of Pity and Justice": The Criminal Justice Response to Infanticide in Ireland, 1922-1949', *Law and History Review*, 31(4), 793-841, at 808.
[38] NAI Department of Justice 18/3540. Garda Report, 24 May 1929.
[39] NAI Department of Justice 234/2603. Application for commutation.
[40] NAI CCA 56/1944. Evidence of Ellen Keogh.

naïve. Women who already had living children were more knowledgeable about matters of reproduction and childbirth. Mary Lenihan was constructed as possessing greater agency than many other women in the sample. This agency, articulated in court as knowledge of reproductive matters, was presented as evidence of her guilt. Prosecution counsel asked, 'like any woman of your experience who had yourself thirteen children you had a good deal of knowledge about the birth of children?'[41] When questioned about her granddaughter's pregnancy, prosecution counsel remained dubious that she would have been unaware, asking if she had noticed Hannah becoming 'stouter'?[42]

Women who were considered to be 'persistent offenders' were also judged more harshly,[43] even in cases where no charges had been brought. Elizabeth Hannon, Mary Kiernan and Kate Owens were all labelled 'persistent offenders', women who had previously given birth to illegitimate infants, but Kate Owens was the only one who had been previously convicted of offences relating to infanticide. That this was not Kate Owens's first pregnancy was further evident from the remains found at her family home. She had been previously convicted on 25 April 1934 for concealment of birth,[44] but the multiple bones found suggest that Kate had experienced a series of illegitimate pregnancies. Kate's history of conviction may have made it more likely that she would become a target of speculation and surveillance, however her successfully concealed pregnancies in the later years suggested that she ably avoided detection for some time.

However, there were also those women such as Elizabeth Hannon, who reported that she had twice before given birth to dead infants, who could be branded as 'persistent offenders', morally if not legally.[45] Mary Kiernan too had given birth to an infant in 1919 which had died in infancy. This fact caused official consternation. Both Justice O'Byrne and the Department of Justice commented that this earlier pregnancy should warrant a lengthier stay in prison, a handwritten note in the Department recommended that:

---

[41] NAI CCA 30/1928. Evidence of Mary Lenihan.
[42] ibid.
[43] The differential treatment according to whether a woman was a 'first time' or 'persistent offender' was visited on her child as well, while children born to first-time mothers were often boarded out or informally adopted, the children of 'persistent offenders' were more likely to end up in Industrial Schools, see Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999).
[44] Kate had been bound over to good behaviour for a period of five years on her father's bail to the sum of £25. NAI Department of An Taoiseach DT S.13383A.
[45] NAI Department of An Taoiseach S.5571.

> [T]he question of further clemency be postponed for three months at least. It is against the prisoner to some extent that she had an illegitimate child in 1919. It cannot be argued that she was overcome by the overwhelming shame.[46]

Mary Kiernan was 22 when she was sentenced to death in 1926; she would have been approximately 15 when she gave birth in 1919. Her age was not incorporated into judgements made about her moral failings and her prior 'fall' was judged harshly.

The age of the infant at death was also relevant as an aggravating feature. Cases in which the infants were not killed immediately following birth were considered more serious, evident in the remarks of the Trial Judge following the conviction of Christina Russell that 'This is not an ordinary case of infanticide, inasmuch as the murder did not take place until some 20 days after the birth of the child.'[47] Christina Russell had given birth in the South Dublin Union; as mentioned above, infants born in an institution tended to be older when they were killed, this led the Secretary at the Department of Justice to claim, in Christina Russell's case, that the crime was committed 'in cold blood'.[48]

A further aggravating feature in such births was the evidence given by the staff in institutions that the infant had been healthy and strong. In the case of Elizabeth Doran, a maternity nurse testified that 'The child seemed quite healthy' while another woman who worked at the Home also noted that Doran herself 'appeared to be in good health at the time.'[49] This was despite the fact that while in prison her general health was classed as 'Poor' and her physical condition 'Spare & Weak'.[50] Infants born in institutions were also registered on the Register of Births and Deaths, something which may have reinforced their status as persons and compounded the sense of wrongdoing; Mary Kiernan's infant was baptised,[51] while the infant of Elizabeth Edwards was provided with a name, Mary Teresa.

The profile of the 'typical' infanticide outlined above as that of a young, sympathetic figure, experiencing labour alone, who killed the infant immediately following birth

[46] NAI Department of Justice 234/1491. Handwritten notes, February 1927.
[47] NAI Department of An Taoiseach S.6096. Letter from Justice O'Byrne, 27 November 1930.
[48] NAI Department of Justice 234/3332. Letter from Stephen Roche, 17 November 1933.
[49] NAI CCC Wicklow 1926 1C-90-28.
[50] NAI GPB/PEN/3/216.
[51] NAI CCC Westmeath 1926 1C-90-26.

through a disturbance of the mind was an 'ideal'; many of the women in the current sample could not attain this standard.

Moral Panic

As noted by Sandra McAvoy, in the late-1920s and continuing into the 1930s, a 'moral panic' gripped certain quarters of Irish society regarding the problem of infant mortality and illegitimacy.[52] Maria Luddy writes that from 1926 to 1929 there were slight year-on-year increases in the number of illegitimate births; this alarmed officials who speculated that the true figure was inevitably higher.[53] The first census in the Irish Free State, held in 1926, showed that some inner-city areas of Dublin registered infant mortality rates as high as 170 per 1,000. The mortality rate for infants was consistently worse for illegitimate infants; the figure for illegitimate infants in 1930 was 251 per 1,000.[54] In this period, the alarmist tone of Establishment voices is evident, such as in the repeated *Irish Times* editorials which warned that there was an epidemic of unwanted babies.[55]

The case of Deborah Sullivan, in particular, can be interpreted in light of the specific political and social context in which her offence occurred.[56] Deborah Sullivan was sentenced to death before Justice O'Byrne on 13 June 1929; her case provides an example of a particularly punitive criminal justice response. Deborah Sullivan, aged only 21, was one of the youngest women in the sample. Deborah claimed that when she began to experience labour pains she had left home with the intention of making her way on foot to the infirmary. This path took her across mountainous terrain, and while on the mountainside she had given birth. The weather that day had been horrendous, and there was snow lying on the ground. As more details emerged, her situation became even more pitiable. While in prison, Deborah revealed that she had been the victim of rape. Her trial was also considerably delayed due to an illness she developed while in prison, and there is

[52] Sandra McAvoy, 'The Regulation of Sexuality in the Irish Free State, 1929-1935', in Greta Jones and Elizabeth Malcolm, eds, *Medicine, Disease and the State in Ireland, 1650-1940* (Cork University Press 1999).
[53] Maria Luddy (2001) 'Moral Rescue and Unmarried Mothers in Ireland in the 1920s', *Women's Studies*, 30(6), 797-817.
[54] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).
[55] Sandra McAvoy, 'The Regulation of Sexuality in the Irish Free State, 1929-1935', in Greta Jones and Elizabeth Malcolm, eds, *Medicine, Disease and the State in Ireland, 1650-1940* (Cork University Press 1999); Louise Ryan, 'The Press, The Police and Prosecution: Perspectives on Infanticide in the 1920s', in Diane Urquhart and Alan Hayes, eds, *Irish Women's History* (Irish Academic Press 2004).
[56] NAI CCC Kerry 1929 1C-94-61; Department of An Taoiseach S.5886; Department of Justice 234/2590.

evidence that Gardaí considered her sickly; one Guard gave evidence that 'I told her she could see a priest or any of her relatives…. I did all I could for accused. I called in the doctor to see her three times on my own responsibility.'[57] He described her situation as 'a very sorry plight.' The features of her case presented a seemingly obvious opportunity to allow lesser charges such as concealment of birth. The outcome is incongruous in light of this; Sullivan was shown little mercy and was convicted of the murder and sentenced to death.

During deliberations the jury had returned, unable to reach a verdict, and Justice O'Byrne had effectively precluded them from returning a verdict of guilty but insane:

> The Jury had a difficulty in arriving at their verdict and informed the Judge that their difficulty was as to the state of mind of the woman at the time of the act. The Judge having explained to them that the onus of proof that prisoner was unable to appreciate her actions at the time she committed the crime lay on the defence which however had not established such proof.[58]

The jury then returned a verdict of guilty with a strong recommendation to mercy having regard to the exceptional circumstances of the birth. This extension of mercy was then reinforced by Justice O'Byrne who further recommended that 'early affect' be given this recommendation.[59]

During this period, Justice O'Byrne also heard the earlier case of Mary Kiernan, in which the jury initially returned a verdict of guilty 'but not responsible for her actions'.[60] O'Byrne further instructed that if they believed that she did not know what she was doing they must find her guilty but insane. The jury retired again, and returned 20 minutes later with a guilty verdict and a strong recommendation to mercy.[61] Only the unattainable threshold of the insanity plea appeared to preclude the jury from returning an alternative verdict. However, the fact that both Trial Judges and juries were seemingly unable to find room for mercy prior to conviction suggests that the surrounding debate about the sanctity of infant life was finding traction.

[57] NAI CCC Kerry 1929 1C-94-61. Deposition of Superintendent Quinn, 12 March 1929.
[58] NAI Department of An Taoiseach S.5886. Memorandum, 17 June 1929.
[59] ibid.
[60] 'Baby in Canal: Young Mother Found Guilty of Murder' *Irish Examiner* (29 October 1926).
[61] ibid.

There were a number of cases in which medical evidence was introduced to suggest that the child could have died accidentally. A doctor who gave evidence in Catherine Aherne's defence said that it was 'possible that the injuries might have been caused by the mother accidentally'.[62] The conflicting evidence given by two medical experts in the trial of Christina Russell could likewise have provided sufficient doubt to return a verdict of Not Guilty, or alternatively to return a manslaughter conviction. However, this course was not adopted; indeed Justice O'Byrne noted that the jury had obviously come to the conclusion that Russell had drowned her infant, despite conflicting expert evidence.[63] The jury were absent for only 15 minutes.[64] Again, in the 1938 case of Mary Somerville, the Trial Judge, Justice O'Byrne, refused to leave the question of manslaughter open to the jury; O'Byrne, was asked by defence counsel to recall the jury and advise them on lesser charges and refused, stating 'What is the evidence of manslaughter in this?' and on concealment of birth, commenting that this was 'inconsistent with the facts'.[65]

During this period of acute concern about infanticide, Trial Judges took the opportunity in charges to the jury or at the moment of passing sentence, to reinforce the symbolic function of the death penalty. When Elizabeth Doran was sentenced to death, the press reporting noted the concerns of the Trial Judge in the case:

> Mr Justice Hanna characterised the case as a serious one and of great importance. Cases of infanticide, he said, unfortunately were appearing in that court more frequently than they should. The whole social fabric depended upon the strict administration of the law.[66]

The influence of individual Trial Judges is evident in this period also.[67] Justice O'Byrne presided over the cases of Mary Anne Keane,[68] Deborah Sullivan,[69] Catherine Aherne[70]

---

[62] 'Another Death Sentence' *Leitrim Observer* (29 June 1929).
[63] NAI Department of An Taoiseach, S.6096. Conflicting medical evidence outlined in 'Baby's Body in a Ditch' *Irish Times* (27 November).
[64] 'Woman Sentenced to Death' *Irish Times* (28 November 1928).
[65] NAI Department of An Taoiseach, S.11040. Trial Judge's Charge to the Jury.
[66] 'Woman Sentenced to Death' *Irish Examiner* (4 June 1926).
[67] Kenneth Deale remarked on the influence of the Trial Judge in criminal trials, he wrote that 'the authority of the Judge's position, and of his personality if he is a strong Judge, together ensure that the jury will either totally accept the Judge's view of the case, or be seriously influenced by it.' Deale wrote that Justice O'Byrne was such a judge, describing him as 'too strong minded'. Kenneth EL Deale, *Beyond Any Reasonable Doubt? A Book of Murder Trials* (Gill and Macmillan 1971) at 108.
[68] Convicted 10 June 1929.
[69] Convicted 13 June 1929.

and Mary Lenihan,[71] as well as the later cases of Christina Russell,[72] Elizabeth and Rose Edwards,[73] and Mary Somerville.[74] Throughout these cases, O'Byrne forcibly articulated his opinion that infanticide had reached worryingly high levels. At the trial of Deborah Sullivan in June 1929, O'Byrne:

> [S]aid it was regrettable that cases of this kind had become of such frequent occurrence. The prerogative of mercy did not lie with either the judge or the jury, for they were bound by their oaths to find according to the evidence.[75]

In Sullivan's trial also, the prosecution counsel expressed his regret that such cases had become common:

> Mr Lavery (prosecuting) said these cases were becoming unfortunately but too common in late years and the jury should bear in mind the fact that in the eye of the law the life of a newly-born child was as valuable and should be as jealously safeguarded as that of an adult.[76]

This, as highlighted above, was despite the fact that Sullivan had been the victim of rape. In the same article, the correspondent noted that 'There are now two women under sentence of death in the Free State.'[77] This could be interpreted as a comment which suggested a stain on the national conscience, and further suggested that infanticide was reaching 'epidemic' levels, yet it displays a notable lack of compassion for the plight of women like Deborah Sullivan. Following the conviction of Catherine Aherne, the headline of one article read 'Another Death Sentence',[78] this followed only two weeks after the conviction of Deborah Sullivan, in a summer in which a significant number of death sentences had been handed down to women. Even by the late-1930s, there were still remnants of this rhetoric. In the context in which it had become expected that mercy would be shown to women suspected or charged with infanticide, there was a determined attempt by the Trial Judge in the Mary Somerville trial to reassert the sanctity of infant life:

---

[70] Convicted 25 June 1929.
[71] Convicted 30 November 1928.
[72] Convicted 27 November 1930.
[73] Convicted 28 March 1935.
[74] Convicted 15 November 1938.
[75] 'Infant in Bush' *Irish Examiner* (14 June 1929).
[76] ibid.
[77] ibid.
[78] 'Another Death Sentence' *Leitrim Observer* (29 June 1929).

> One hears a good deal of discussion from time to time about child murder, but let me tell you that the life of a young child is just as sacred in the eyes of our law as the life of any adult person, and the life of the child is protected by our law in just the same way as the life of an adult person; and should it not be?[79]

The Trial Judge was responding to a defence argument which reasoned that the shame of illegitimacy was 'a natural thing to try to avoid'. He responded:

> I don't quite follow what is meant by that sentence. It may be a natural thing to try to hide the birth of an illegitimate child, but it is not to be suggested that it is a natural thing to kill the child for the purpose of hiding its birth.[80]

However, despite these protestations, the court files suggest that infant death, and especially the deaths of illegitimate infants, were not accorded the same gravity of condemnation and legal sanction.

In the trial of Catherine Aherne, Justice O'Byrne again spoke on the prevalence of child murder, the marriage between Trial Judge and newspaper correspondent was again evident in the newspaper sub-heading 'A Serious Problem'. Justice O'Byrne had said that

> [C]hild murder had, unhappily, become very prevalent in the country. The problem of child murder was a very serious one, and the only protection the public had was that afforded by a jury.[81]

The jury and the act of passing sentence of death are presented as deterrents to this offence. Similarly, when Christina Russell's release from prison was being considered, the Governor of Mountjoy Prison cautioned that, 'in view of the prevalence of the crime of which she has been convicted, in my opinion, she should be detained in prison for a longer period.'[82]

In the case of Elizabeth and Rose Edwards, Justice O'Byrne again spoke on his particular fears that infant life was not valued as highly as adult life.

---

[79] NAI Department of An Taoiseach, S.11040. Trial Judge's Charge to the Jury.
[80] NAI Department of An Taoiseach, S.11040. Trial Judge's Charge to the Jury.
[81] 'Another Death Sentence' *Leitrim Observer* (29 June 1929).
[82] NAI Department of Justice 234/3332. Note from Governor to Secretary of Department of Justice, 1 June 1933.

> Now, some people are inclined to draw a distinction between the taking of the life of a child and that of an adult. Gentlemen, there is no foundation in our law for any such distinction. Neither am I aware of any foundation for such a distinction in any system of morality known in this country. When a child is born into this world and had lived it is entitled to the same protection from our law as any person and it needs that protection more than an adult. An adult can take certain means for the protection of his own life but a helpless babe can do nothing. Its safety depends upon the care and affection of those in whose [sic] it is placed and upon the protection of the law.[83]

This attack on a system of morality which did not equate infant life with adult life may have been an oblique attack on the legislation in England. O'Byrne also foreshadowed the infanticide legislation of 1949.

Despite the symbolic significance of the death penalty for these cases, it was also the case that the urgency to commute was considerable. As mentioned above, the processes at work post-conviction sought to exculpate the women in a timely fashion. In the case of Mary Anne Keane, Justice O'Byrne endorsed the jury's recommendation to mercy, he wrote that he would 'hasten to forward this recommendation to you and to add to it my own,'[84] while elsewhere it was noted that O'Byrne desired prompt action 'as the strain of remaining for any lengthy period under the sentence of death might have a very prejudicial effect on this woman's mental health.'[85] The same reasoning was evinced by O'Byrne in the case of Deborah Sullivan also.

There were other examples that these infanticide cases provoked hasty attempts to secure commutation. The case of Mary Kiernan provides an example of this. Kiernan was sentenced on 28 October 1926. At this time, the President of the Executive Council, WT Cosgrave, was travelling in England, and the letter regarding commutation in Kiernan's case reached his staff 'one minute' before he departed for Manchester. His Secretary continued, 'in the meantime, I have no doubt that he would agree to the recommendation that a reprieve should be granted in the case of Mary Kiernan.' The Secretary continued

[83] NAI CCA 13/1935. Trial Judge's Charge to the Jury.
[84] NAI Department of Justice 18/3540.
[85] NAI Department of Justice 18/3540. Memorandum.

that the other Ministers present and the Attorney General all concurred.[86] This communication had been sent to the members of the Irish cabinet at their rooms in the Hotel Cecil in London, demonstrating that urgency of commutation. In Department of An Taoiseach files on the case of Catherine Aherne, it was also noted that the Minister for Justice 'would like to get an early decision on the matter'.[87] Aherne had been convicted on 25 June and her sentence was commuted three days later. Throughout the cases in the sample, the women sentenced to death for infanticide around this period experienced the shortest waiting period between conviction and commutation. Elizabeth Hannon and Deborah Sullivan had five days to wait, Mary Kiernan 11, Mary Anne Keane and Margaret Finn only two and Christina Russell just one.

Infanticide as a Proxy for Illegitimacy

That illegitimacy was a near universal feature in the infanticide cases of women sentenced to death demonstrates how infanticide was selectively prosecuted according to considerations of illegitimacy/legitimacy. Illegitimacy in Ireland post-1922 was viewed as a fundamental threat to the social order and to the preservation of the family.[88] In 1944, as part of an ongoing series of discussions on the possible reforms of the law on infanticide, a memorandum was circulated to the cabinet which elaborated on the current practice in the area:

> An unmarried mother who kills her child is guilty of murder and liable to capital punishment unless she establishes a defence on the ground of insanity. Medical authorities are now of opinion, however, that a woman, although not insane, might suffer from such disturbances of mind in such circumstances, that she would not be fully responsible for her actions. In fact no woman has been hanged for very many years for the murder of an infant child. In the majority of cases the Attorney-General reduces the charge of murder to a charge of concealment of birth and in the few cases in recent years in which

[86] NAI Department of An Taoiseach S.5195. Letter from Secretary, 5 November 1926.
[87] NAI Department of An Taoiseach S.5891. Letter from Department of the President, 28 June 1929.
[88] Lindsey Earner-Byrne (2008) 'Reinforcing the Family: The Role of Gender, Morality and Sexuality in Irish Welfare Policy, 1922-1944', *History of the Family*, 13(4), 360-369.

> woman have been convicted of the murder of infants, the sentence of death has been commuted.[89]

The above paragraph provides an officially recorded slip of the tongue. The reference is to an 'unmarried mother' although the law made no distinction based on the marital status of the mother. Within the sample, 14 women were sentenced to death for the murder of 13 infants. Twelve of these infants were illegitimate. The exception was the infant of Catherine Aherne who was already heavily pregnant when she married and remained living in the family home after the wedding. Her pregnancy would likely have provoked a family crisis leading to her marriage to Laurence Aherne. Catherine had married Laurence Aherne on 12 February and the child had been born on or about 30 March. This fact was included in the memorandum on Aherne which commenced 'The evidence at the trial showed that prisoner when she was married in February last was already pregnant and continued to live with her parents.'[90]

In the press reporting of infanticide, the fact of illegitimacy was very often included and was considered a newsworthy feature of such cases, for example in the case of Elizabeth Hannon, which report read that she was convicted 'for the murder of her illegitimate child',[91] or in the letter of the Trial Judge in which he refers to 'this illegitimate child'.[92] Newspaper reporting throughout identified the victim as illegitimate, such as in the case of Deborah Sullivan in which it was reported that she was 'charged with the murder of her illegitimate child.'[93] Likewise, one report which described Christina Russell as 'a young unmarried woman' and her child as 'her illegitimate infant' suggests the motivation for her offence within its unspoken judgements and values.[94] In official memoranda outlining the circumstances of Elizabeth Hannon's case the first sentence reported that Hannon was 'unmarried', this information contextualised the killing of the infant, producing a readily understood narrative of shame and concealment.[95] These descriptions communicated more than marital status, they also offered commentary on morality.

[89] NAI Department of An Taoiseach S.7788A. Memorandum, 4 January 1944.
[90] NAI Department of An Taoiseach S.5891. Memorandum.
[91] 'Death Sentence on Irish Girl' *Mayo News* (24 December 1927).
[92] NAI Department of Justice 234/2016. Letter from Justice Johnston, 12 December 1927.
[93] 'Pithy Provincial News: Munster' *Irish Independent* (23 February 1929).
[94] 'Woman Sentenced to Death' *Irish Times* (28 November 1930).
[95] NAI Department of An Taoiseach S.5571. Application for Discharge of a Convict, 15 December 1927.

Stigma and Shame of Illegitimacy

In his charge to the jury in the trial of Elizabeth and Rose Edwards, Justice O'Byrne argued that 'law cannot step in to save a life'.[96] However, the offence of infanticide was often a direct offshoot of societal attitudes which were hardened by a legal infrastructure which conspired to cheapen the value of 'illegitimate' infancy and 'illegitimate' motherhood, while also creating a 'maternity trap' for women.[97] Law had actively 'stepped in' by creating legal realities out of the religious discourse on shame, evident in the prohibition on contraceptives and information relating to reproductive health, and the lack of State support for unmarried mothers.[98] Inevitably, as Ryan has written, the tighter restrictions on contraceptives merely exacerbated the problem of illegitimacy.[99] Further, as official reports warned in the early 1930s, the overwhelming stigma attached to illegitimacy effectively distorted the figures on illegitimate births to a significant extent.[100]

Many of the women in the sample concealed their pregnancy and the birth of the child from everyone they knew. The stigma of illegitimacy in Ireland forced some women in the sample to give birth alone. Elizabeth Hannon gave birth in the lavatory of her employer's home where she worked as a domestic servant. When she complained of feeling unwell afterwards, the daughter of her employer inadvertently discovered her condition:

> I went into her room. She was lying on the bed with her boots on. I made her take off her boots and when I pulled back the clothing I noticed there was something wrong. I did not know what had happened. I went down to the County Home and as a result of what I was told I came back and had Elizabeth Hannon conveyed to County Home in the ambulance.'[101]

Kate Owens also gave birth to the infant without assistance:

---

[96] NAI CCA 13/1935. Trial Judge's Charge to the Jury.
[97] See Chapter Three for a discussion of these legal developments.
[98] Sandra McAvoy, 'Before Cadden: Abortion in Mid-Twentieth-Century Ireland', in Dermot Keogh, Finbarr O'Shea and Carmel Quinlan, eds, *Ireland in the 1950s: The Lost Decade* (Mercier Press 2004).
[99] Louise Ryan, 'The Press, The Police and Prosecution', in Diane Urquhart and Alan Hayes, eds, *Irish Women's History* (Irish Academic Press 2004).
[100] Sandra McAvoy, 'The Regulation of Sexuality in the Irish Free State, 1929-1935', in Greta Jones and Elizabeth Malcolm, eds, *Medicine, Disease and the State in Ireland, 1650-1940* (Cork University Press 1999).
[101] NAI CCC Westmeath 1925-1927 1C-90-26. Deposition of Mary Mitchell, 2 September 1927.

> When I got the birth pains I knew the baby was going to be born. I removed my underclothes and remained in a stooped position on the floor. After about five minutes the baby was born and the feet came first. I helped to deliver myself of the child by catching it around the waist and pulling it.[102]

Threat of exposure was used in Ellen Keogh's case to persuade her to make a statement. Her defence argued that the Guards coerced Ellen into making a statement by telling her that if she did not they would have to question the neighbours and those in the local area. Ellen testified about her fear that others would find out, particularly her husband's family: 'I was very worried about it all the time and I was afraid that my husband's people or any of his friends would get to hear of it.'[103]

In cases such as that of Mary Lenihan and Mary Somerville, both older women who were convicted of murdering their great-grandchild and grandchild respectively, the lived experience of the stigma of illegitimacy may have been motivating factors in the events. Mary Somerville had previously given birth to an illegitimate infant, while Hannah Lenihan was the illegitimate granddaughter of Mary Lenihan. In Mary Somerville's Garda Report this fact featured heavily, as the parentage of a number of her children were considered suspect and it was recorded that 'In her extreme youth Mary Somerville, who was then employed as a domestic servant, gave birth to an illegitimate child'.[104] The actions of Mary Somerville could therefore be understood as grounded in personal experience of illegitimacy. One letter writer who appealed for mercy acknowledged the burden of shame, stating that Annie Somerville's [the mother of the infant] 'life in Ireland henceforth must be a life of disgrace and humiliation'.[105] While Mary Lenihan gave evidence in court, the illegitimacy of her granddaughter Hannah was put to her, 'this girl was born before your daughter was married?'[106] Paradoxically, while the shame of an illegitimate pregnancy was pronounced, the *awareness* of the shame was also an important feature in rendering women more sympathetic. The propriety of experiencing such shame could be viewed as an appropriate marker of feminine demureness. In cases of

[102] NAI CCC 1D-22-84 Westmeath 1943. Statement of Kate Owens, 9 May 1943.
[103] NAI CCA 56/1944. Second statement of Ellen Keogh, 12 January 1944.
[104] NAI Department of An Taoiseach S.11040. Garda Report, AE O'Reilly, 17 November 1938.
[105] NAI Department of An Taoiseach, S.11040. Letter from 'A Citizen of Waterford', 10 December 1938.
[106] NAI CCA 30/1928.

intergenerational illegitimacy such as that of Somerville and Lenihan, it was often considered that such women were incapable of feeling the shame.

Certainly, a life of stigma was something which was obvious to all. Rose Edwards, convicted of the murder of her sister's infant, had said numerous times throughout the investigation that the child 'was better off dead.'[107] The abjection of illegitimate infants is further demonstrated in the evidence of an investigating Guard, 'I said why didn't you bury it in the Churchyard. Rose said "that she thought that these children" doesn't be buried in the Churchyard.'[108] During cross-examination, Rose was asked 'I take it that you felt [Elizabeth's] position keenly and you felt great shame and disgrace brought upon yourself, your parents and your brother?'[109] The sisters' fear of their father is also referenced at one point as a Guard recalled hearing Rose say that 'The old fellow will kill us if he hears about the baby.'[110] The shame of an illegitimate pregnancy therefore extended to, and marred, the reputation of an entire family. Indeed, in a memorandum of 1941, a list of hereditary weaknesses was outlined as 'inebriety, insanity or immorality'.[111]

Lindsey Earner-Byrne has noted the centrality of the family in the newly Independent Free State; Earner-Byrne argues that the meaning of Ireland post-1922 was premised on the intersections between the State, the Catholic Church, and the family. She writes that the importance of the family obscured individualism and ensured that personal shame was felt more broadly:

> The issue of reputation was central to much of the social control exercised in Ireland. The fear of the loss of one's reputation was based largely on the understanding of the family as a unit: if one member disgraced themselves the rest of the family was tarnished by association.[112]

The attempts of unmarried women entering County Homes to pass themselves as married is further indicative of the shame they felt and the perceived need for concealment. When Elizabeth Edwards entered the County Home she gave her name as Mrs Mannion,

[107] NAI CCA 13/1935. Statement of Elizabeth Edwards, 30 October 1934.
[108] NAI CCA 13/1935. Evidence of James Edwards.
[109] NAI CCA 13/1935. Evidence of Rose Edwards.
[110] NAI CCA 13/1935. Evidence of Patrick Tobin.
[111] DDA Archives of Archbishop John Charles McQuaid. AB8/b/XXVIII/983. Memorandum prepared by EM Carroll, Probation Officer at Dublin Metropolitan Courthouse, forwarded in a letter 9 July 1941.
[112] Lindsey Earner-Byrne (2008) 'Reinforcing the Family: The Role of Gender, Morality and Sexuality in Irish Welfare Policy, 1922-1944', *History of the Family*, 13(4), 360-369, at 363.

incorporating the surname of the father of her child. In her attempt to present herself as married, and therefore a respectable, woman, she also wore a wedding ring. However, her ruse was unsuccessful and a maternity nurse, obviously familiar with such ploys, remarked that she 'did not know any Mrs Mannion in Fuerty'.[113] Elizabeth's attempt to conceal her identity is indicative of a culture of shame surrounding unmarried motherhood. The trial is a record of the sisters' attempts to deceive and conceal a pregnancy and birth from family and neighbours. Rose's explanations to account for her sister's absence included a story that Elizabeth was having an operation, and another that she had appendicitis, and were all attempts to obscure the true nature of her stay away from home. When discharged from the County Home, the expense of hiring a car, the circuitous route they insisted on (which avoided the road where their father and brother worked), and their request that they be let out a mile from their home, all seemed indicative of a need to conceal. In the final analysis, both the Trial Judge, and the Court of Criminal Appeal read these attempts to conceal the pregnancy and birth as sufficient evidence of motive for murder. Indeed, in the case description before the Court of Criminal Appeal, the fact of the child's illegitimacy is a material element, comprising part of the descriptor of the victim as an 'illegitimate infant'.[114]

In a similar way, Mary Kiernan had presented herself as married in Mullingar County Home,[115] while Christina Russell used the name of her brother's wife.[116] Russell did not conceal her pregnancy from everyone, however; her sister Katie reported that in July Christina had asked her to get a certificate of admission to the Union. While Christina was in the Union, Katie received a letter from her sister informing her that she had given birth to a baby boy. Indeed, when Christina returned home without her child, her sister had queried where the baby was, and Christina had told her it had been placed in a home.[117]

That shame was overwhelming was clear, it often formed part of the narrative of women's motivation. In some respects, as Brennan has concluded, feelings of shame were a response in accordance with expected femininity.[118] In a Department of Justice memorandum on

[113] NAI CCA 13/1935. Evidence of Margaret Campbell.
[114] *Attorney-General v Edwards* [1935] 1 IR 500.
[115] 'Baby in Canal: Young Mother Found Guilty of Murder' *Irish Examiner* (29 October 1926).
[116] 'Baby's Body in a Ditch' *Irish Times* (27 November).
[117] 'Baby's Body in a Ditch' *Irish Times* (27 November).
[118] Karen Brennan (2013) '"A Fine Mixture of Pity and Justice": The Criminal Justice Response to Infanticide in Ireland, 1922-1949', *Law and History Review*, 31(4), 793-842.

Elizabeth Doran, the shame of having an illegitimate infant was suggested as one possible motive for the killing:

> It is not clear what prompted her to commit the deed. It probably was an attempt to conceal her fall from her neighbours – or it may possibly have been a desire to rid herself of the burden of the child's maintenance.[119]

In a petition written by Mary Kiernan, in which she asks for further clemency in sentence, she explained her actions as motivated by shame: 'I did not know what I was doing at the time with shame and disgrace, that it would turn out so serious, or I would not have done it at the time.'[120] For many women, their active terror of family member's discovering their pregnancy presented compelling motivation; in the case of Deborah Sullivan, Justice O'Byrne noted that 'She was living at home at the time and she stated in her evidence that she was terrified of her mother.'[121]

The wilful ignorance of family members is evident throughout. The first that Elizabeth Edwards's parents and brother knew of what had happened was on 30 October, the day after the Guards had first visited the house.[122] Once again, the actions of the family betray a curious lack of interest, or what could be termed as wilful ignorance. Both parents stated in their evidence that they had not enquired about why Elizabeth might have required an operation, and neither had visited or asked probing questions about her absence. Even after the Guards left their home on the night of the 29 October, they claim that they asked no questions of their daughters, and did not enquire why the Guards had visited.

The younger brother of Ellen Keogh, who lived in the house with her, also claimed no knowledge that Ellen was pregnant. Ellen testified that she would not have expected Thomas to notice her pregnancy, 'he is a quiet lad who comes in from his work and would never notice anything like that',[123] but the Trial Judge concluded that Thomas 'must have been a simple and unobservant man.'[124]

---

[119] NAI Department of Justice 234/1297. Memorandum by TA Finlay, 19 June 1926.
[120] NAI Department of Justice 234/1491. Petition of Mary Kiernan, 31 January 1927.
[121] NAI Department of An Taoiseach S.5886. Memorandum, 17 June 1929.
[122] NAI CCA 13/1935.
[123] NAI CCA 56/1944. Second statement of Ellen Keogh, 12 January 1944.
[124] NAI CCA 56/1944. Trial Judge's Charge to the Jury.

Kate Owens's mother claimed that she 'never noticed anything about Katie's condition in the spring of this year.'[125] In fact, all of Kate's family who provide depositions deny being aware that Kate was pregnant in 1943. This may suggest a studied determination of wilful ignorance. Her sister stated, 'I never suspected my sister was pregnant,'[126] while her brother stated that 'I noticed nothing about her condition. She was wearing a loose coat'.[127] Her mother, regarding the birth of Kate's stillborn child stated, 'I never asked Katie anything more about it.'[128] This statement from Kate's mother is telling and indicates a desire not to know.

The shame, which made concealment more likely, also exposed already marginalised women to further dangers. For example, in the case of Elizabeth Hannon, whose solitary birth required later medical attention. In other cases, such as that of Mary Kiernan, the lack of support structures due to the need for secrecy rendered their plight a lonely one. Kiernan, when discharged with her infant from the County Home, had to walk in heavy rain to reach her home.

Class and Community

The profile of women capitally convicted of infanticide in the sample was of women who were rural, who lived economically marginalised lives, often involved in domestic work. These women were from lower socio-economic classes, and many belonged to the 'labouring class'. In a memorandum of 1941, the Probation Officer EM Carroll noted that women appearing before the courts on infanticide charges were 'in the majority of cases from country districts, often from isolated places in the West', she continued that, 'As a class the majority spring from the ordinary labouring family some from the decent small farmer, a few from the riff-raff of the small town back street population.'[129]

The differential surveillance and prosecution of women according to class was noted by other researchers. Women from lower socio-economic classes were more actively policed

[125] NAI CCC 1D-22-84 Westmeath 1943. Deposition of Annie Owens, 15 June 1943.
[126] ibid.
[127] NAI CCC 1D-22-84 Westmeath 1943. Deposition of Patrick Owens, 15 June 1943.
[128] NAI CCC 1D-22-84 Westmeath 1943. Deposition of Annie Owens, 15 June 1943.
[129] DDA Archives of Archbishop John Charles McQuaid. AB8/b/XXVIII/983. Memorandum prepared by EM Carroll, Probation Officer at Dublin Metropolitan Courthouse, forwarded in a letter 9 July 1941.

in the community while younger, unmarried women particularly were targets for informal surveillance.[130]

The surveillance of unmarried women who had recently given birth was particularly notable in the case of Christina Russell; Christina had lied about her marital status when she entered the South Dublin Union. During the trial, a nurse in the Union was asked if enquiries were made about Christina, she responded, 'You see this woman was supposed to be a married woman and we did not take as much notice of her as if she had been a single woman.'[131] This demonstrates the deliberate policy of vigilance of unmarried mothers. Another witness who saw Christina on the day she left the Union questioned her about her marital status:

> I then asked her if she was married and she said No. I asked her how she got out of the Union as I understood married girls would have to stay some time in the Union to mind their babies and she said there were new rules in the Union now.[132]

Women therefore had few options when they became pregnant. Marginalised women would have been disproportionately affected by the stigma of an illegitimate infant. The evidence given by the brother of Elizabeth and Rose Edwards may have suggested that Elizabeth had attempted to take steps to terminate the pregnancy or to arrange an adoption, perhaps when she realised that no help would be forthcoming. He recalled that 'Lizzie went to Dublin for medical attention about a fortnight before she went to [the County Home].'[133] Elizabeth Edwards remained an anomaly among the cohort however as there was no evidence any of the other women had sought solutions to their crisis.

This precariousness is evident in the case of Mary Anne Keane; Keane gave birth in a County Home and when discharged she was unable to return to her husband's home as he had turned her out of the house months before, she had no 'real home to go to.'[134] Keane had wandered from place to place on foot for some days; when met by a neighbour of her

---

[130] Louise Ryan, 'The Press, The Police and Prosecution: Perspectives on Infanticide in the 1920s,' in Diane Urquhart and Alan Hayes, eds, *Irish Women's History* (Irish Academic Press 2004); Clíona Rattigan, '*What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).
[131] NAI CCA 24/1930. Evidence of Alice Kelly.
[132] NAI CCA 24/1930. Evidence of Margaret O'Callaghan.
[133] NAI CCC Roscommon 1935 1D-94.20. Deposition of James Edwards.
[134] NAI Department of Justice 18/3540. Memorandum.

husband's he reported that Keane 'appeared to be distressed, and was almost crying.'[135] The poor health of some women could also be understood as linked to poverty, such as Elizabeth Doran who was reported to have been 'in bad health before the child was born.'[136]

The lower socio-economic class of many of the women is evident from descriptions of the cramped conditions in which women often lived cheek-by-jowl.[137] In these cases, the incredulity of Trial Judges was sometimes evident as they expressed themselves unable to believe that the woman's pregnancy would have gone unnoticed. Mary Lenihan lived in a labourer's cottage, whose occupancy ebbed and flowed at various points in the year, when her granddaughter Hannah gave birth on New Year's Day, she was there with her husband, her two daughters, one son and three grandchildren.[138]

The prosecution counsel in this case forcibly pursued this line of enquiry during the trial, insisting that events were unlikely to have unfolded as Hannah suggested due to the meagre surroundings.

> Prosecution: This is the first child you ever had?
>
> Hannah: Yes.
>
> Prosecution: It was painful?
>
> Hannah: Yes.
>
> Prosecution: You never uttered a cry; did you cry during the delivery of the child?
>
> Hannah: No.
>
> Prosecution: You lay on the floor, the child was delivered the most painful operation in the world and you never made a noise that your wakeful cousin

[135] NAI CCC Roscommon 1929 1C-94-69. Deposition of Patrick McGowan.
[136] 'Woman Sentenced to Death' *Irish Examiner* (4 June 1926).
[137] Although this is related to class and the lower socio-economic class of the women within the sample, the multigenerational nature of households was also a feature of Irish family throughout much of the twentieth-century. Only 1 in 12 persons lived alone in the census of 1926, compared with 1 in 5 in the census of 1996, see Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).
[138] NAI CCC Cork 1929-1931 1C-94-55.

> Bridget, your grandfather, and your cousin Timothy might hear in this little labourer's cottage, is that so.
>
> Hannah: [No answer].[139]

This thread was again picked up by the Trial Judge as he reviewed the evidence for the jury, he described the small size of the house, and enumerated the many children and grandchildren of Lenihan, concluding by echoing Mary's own words that she had 'more than she can name.'[140] Conditions were not only cramped, family members of the same sex tended to share beds as evidenced above. Catherine Aherne slept occasionally in the same bed as her younger brother Davy.[141]

One feature of community in rural areas which becomes clear from the cohort of infanticide cases is how local rumours were instrumental in detecting many infanticides. Rumours were linked to the discovery of infanticide and informal networks of information kept Guards informed of which women were pregnant. In the case of Deborah Sullivan, the discovery of the body of an infant by a local man as he was out on the mountain repairing a fence, 1,396 yards from her home, prompted Guards to call with her four days later. The connection of the body with Deborah could have been made by piecing together local suspicions, or perhaps from the explicit direction of the doctor to whom Deborah had initially gone following her rape.[142] In the case of Catherine Aherne, it could be speculated that her pregnancy was common knowledge to all especially following her marriage to Laurence Aherne. Catherine also said in her statements that she had been asked by a local doctor if she was pregnant, and she had told him she was due in March.[143]

These same informal networks of information therefore filtered information to Guards which inevitably appeared in Garda Reports on women following sentence, and also inevitably impacted on how they were dealt with. These rumours were used to assess the characters of women. For example, the use of a woman's family to pass judgement on her, as in the case of Elizabeth Doran, the press reported on that trial that her 'family was also

[139] NAI CCA 30/1928.
[140] NAI CCA 30/1928. Trial Judge's Charge to the Jury.
[141] NAI CCC Wexford 1929 1C-94-75.
[142] NAI CCC Kerry 1929 1C-94-61.
[143] NAI CCC Wexford 1929 1C-94-75.

deficient', suggesting poverty rather than anything more, but still acting as a judgement.[144] In a Garda Report on Doran, it was noted that 'her antecedents have been just normal labouring folk', although Doran herself was 'reputed locally to be of a very depraved, immoral type'.[145] In contrast, Mary Kiernan sought to position herself as reputable when she wrote that 'My people are very respectful.'[146]

In some cases, such as that of Elizabeth Doran, the information that the woman had given birth to a child was the first piece of the puzzle, and the discovery of the body came later. For example, an investigating Guard gave evidence that 'in consequence of information received' he had gone to the home of Doran to interview her, whereupon she had led him to where the body was buried.[147] Giving birth in an institution meant that discovery could take place this way and staff members of the institutions were known to contact the local Garda stations to make enquiries following a woman's discharge, as was the case with the discovery of Elizabeth Edwards's infant which was prompted by a matron of the County Home contacting the local Garda station, which then dispatched Guards to investigate the matter. Elizabeth Hannon who was taken to the County Home following the birth of her infant was discovered as a result of the examination she received there which revealed that she had recently given birth. This information was duly forward to the Garda station.[148]

The implicit awareness that illegitimate infants were vulnerable is evident in the enquiries made by those who worked in County Homes. This hyper-awareness demonstrates knowledge that the infants of unmarried mothers were at risk. While in the County Home, Elizabeth Edwards had been warned on a number of occasions to feed her child. A maternity nurse gave evidence that:

> [I]t looked to be a healthy child, but it got to look delicate a day or two afterwards. I asked the mother why it was delicate looking and I asked her if she was feeding it properly. The mother told me that it would not take the feedings. I told her she must try and make it take food.[149]

[144] 'Woman Sentenced to Death' *Irish Examiner* (4 June 1926).
[145] NAI CCC Wicklow 1926 1C-90-28. Garda Report, 3 July 1926.
[146] NAI Department of Justice 234/1491.
[147] NAI CCC Wicklow 1926 1C-90-28.
[148] NAI CCC Westmeath 1925-1927 1C-90-26.
[149] NAI CCA 13/1935. Evidence of Margaret Campbell.

The nurse also explicitly said she 'warned' Elizabeth to feed the baby. This incident was brought to the attention of the doctor who issued a similar warning, 'I warned her to take care and nurse the child and look after her, otherwise, she would get into trouble.'[150] However, despite a well-worn path, and the concern of those at the County Home, no support was offered to Elizabeth. The doctor, when asked if she was 'fit' to feed the child, replied that she was 'quite fit' to do so, an opinion which appeared to speak to a sense of physical fitness rather than any emotional fitness or ability within the particular structural conditions. The doctor had affirmed that the child was breast fed, 'naturally and in the ordinary way', and there is no acknowledgement that a 'natural' biological ability was competing with illegitimacy as a cultural site betokening shame. That Elizabeth was 'fit' to feed the child is a physiological judgement only. When Elizabeth was discharged she was warned again, 'to mind her baby and take great care of it. I told her not to do what Miss Hammil did with her baby.'[151] This warning is an apparent local touchstone, which would have been understood by Elizabeth.

The increased surveillance of Garda was also evident in the sample. For example, a Guard gave evidence that he had first noticed Ellen Keogh appeared to be pregnant in May or June of 1943, but there was no official Garda comment until they arrived at Keogh's cottage on 11 January after the death of the infant. There was no attempt to pre-emptively discuss the issue with Ellen or indeed to provide any form of support. As many scholars have noted, pregnant women were monitored, often inadvertently or informally, by those in the local areas, and it was through a process of rumour that many infanticides were detected.[152]

Motherhood

The concept of motherhood within infanticide cases is an ambiguous one. The conflict between the valorisation of motherhood in Irish society and the abject position of the unmarried mother is evident throughout the discourse on infanticide herein; 'illegitimate motherhood' was a downgraded motherhood.

[150] NAI CCA 13/1935. Evidence of Dr Charles Kelly.
[151] NAI CCA 13/1935. Evidence of Sally O'Gorman.
[152] Clíona Rattigan (2008) '"I thought from her appearance that she was in the family way": Detecting Infanticide Cases in Ireland, 1900-21', *Family and Community History*, 11(2), 135-151; Clíona Rattigan, '*What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).

However, in the case of Mary Somerville, motherhood emerged as a strong theme with positive connotations. Mary Somerville had been sentenced to death for the murder of her infant granddaughter. Somerville's actions in support of her young daughter drew admiration and pity from some letter writers who framed the maternal role as one of sacrifice. The petition sent by Somerville's solicitor strongly referenced her motherhood.[153] The Society for the Abolition of the Death Penalty also wrote that Somerville had acted 'to save her daughter from disgrace'.[154] In this light, her actions were wrong, but understandable.

However, although for most infanticide cases, the standards of normative maternal affection could not be met, women were questioned according to these standards. An example of this is the questioning of a witness on Christina Russell's behaviour towards her infant following her discharge from the Union; the witness was questioned by defence counsel and responded that Christina 'seemed very much attached to it I think.'[155] The Trial Judge followed up this question, pressing for detail, 'When you say she nursed the baby did she nurse it at her breast?'[156]

The failure to adhere to normative maternity was also noted in the trial of Ellen Keogh. Ellen's failure to contact the Gardaí and her decision to continue living with the father of the child after the birth were held as proof that she could only have intended harm to the child. The Trial Judge commented that 'It is contrary to the natural attachment between a mother and her child to believe that any mother would acquiesce in the taking away of her child.'[157]

The expression of maternal ideals demonstrated a lack of awareness of structural factors in favour of individual level pathology. Situating explanations for infanticides within the individual promoted the need for individual-centric rationales of mercy, as seen above. Mary Kiernan's defence counsel in a letter on her behalf wrote that Kiernan 'seemed to me to have very little notion of the sacredness of human life.'[158] The opinion that it was cheapness of infant life, rather than the social censure she faced, speaks to a refusal to

[153] NAI Department of Justice 18/3110. Letter from James J O'Connor, 10 December 1938.
[154] NAI Department of Justice 18/3110. Letter from the Society for the Abolition of the Death Penalty, signed by Rosamond Jacob, 13 December 1938.
[155] NAI CCA 24/1930. Evidence of Margaret O'Callaghan.
[156] ibid.
[157] NAI CCA 56/1944. Trial Judge's Charge to the Jury.
[158] NAI Department of Justice 234/1491. Letter from Michael Lennon to Kevin O'Higgins, 18 March 1927.

acknowledge the societal burdens on illegitimacy. The 'double-speak' engaged in by the legal Establishment obscured that the system itself conspired to cheapen and devalue infant life, when that life was illegitimate. Again, Justice O'Byrne in the Mary Kiernan case claimed:

> It struck me that the prisoner did not even when giving evidence on her own behalf at the trial, realize the gravity of the offence. For that reason I do not think she should be allowed out just yet; but I would strongly recommend that she should be allowed out after a few months from now.[159]

If unmarried mothers who killed their infants could not be contained within common understandings of 'motherhood', it was unlikely that the concept of fatherhood would find traction, especially as 'The weight of social control fell on the woman as her pregnancy was visible, whereas the man's fatherhood was not.'[160]

Ellen Keogh was throughout newspaper reporting unambiguously labelled in the maternal role, while John Mitchell was not. In fact, much of the newspaper reporting of John Mitchell's trial did not allude to him as the father of the infant. The description of the child, in the coverage of both Ellen's trial and John's trial refers continuously to 'the newly-born infant of Ellen Keogh', obscuring John's paternal role. While John's position as the father is never explicitly referenced, Ellen's position as the mother to the murdered infant, and as a mother to her four remaining children, recurs throughout reporting and causes Ellen to be represented as a 'Mother'.[161] The absence of fathers from legal censure is closely linked with the downplaying of structural factors for an individual-level explanation. All the fathers escaped legal censure, including John Mitchell who was acquitted of murder. Laurence Aherne, whose involvement in the birth of Catherine Aherne's infant was suggested in statements but later denied, also escaped legal proceedings. In Catherine's initial statement she said Laurence had buried the body. Catherine Aherne alone was found guilty of an offence in which it is reasonable to speculate that others were involved.[162] Catherine herself appeared to wear this narrative of

[159] NAI Department of Justice 234/1491. Letter from Justice O'Byrne, 4 February 1927.
[160] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001) at 143.
[161] See for example 'Westmeath Labourer on Trial' *Irish Independent* (25 April 1944); 'Mother on Murder Charge' *Irish Press* (April 28 1944).
[162] NAI CCC Wexford 1929 1C-94-75.

the fault being hers, in a petition she stated that 'My husband left Ireland and went to Australia as a result of the disgrace brought on him through me.'[163]

The men involved in the two cases in which rape was alleged, that of Deborah Sullivan, and the statutory rape of Annie Somerville, also faced no consequences. Although criminal proceedings were brought against the father of Annie's infant, her uncertainty regarding details such as dates saw him acquitted.[164] Although Deborah had informed a doctor and a member of the Gardaí about her rape, there is no record of criminal proceedings being taken against the man she named.

In a letter, delivered to Elizabeth Edwards but deemed inadmissible as evidence, the voice of the father of her child, a man named Thomas Mannion, was heard.[165] In the letter, Mannion forcefully underlined his refusal to return to Ireland from England to support Elizabeth, saying 'I would hang before I do that.' He appealed to Elizabeth not to have the child, threatening to drown himself if he was forced to return. He wrote, 'What wood [sic] the people say, or have you anny [sic] sence [sic] at all. So if you don't like that you can please yourself.' He further advised her to go to England, and, perhaps referring to some previous plan they had devised, wrote 'If you want me you will do what we said and that is if you don't cause me any trouble.' Throughout Elizabeth's evidence she had persisted in the story that she had hoped to place the child with a family member until she and Mannion could make arrangements. The receipt of this letter had demonstrated that this was an impossibility, Mannion's lengthy delay in writing back to her had no doubt told her as much itself.

The lack of acknowledgement of any paternal responsibility is particularly notable. As demonstrated in the next chapter, while members of the public occasionally put pen to paper to query the role of men, generally all the social disapproval and any criminal consequences was visited upon the women.

[163] NAI Department of Justice 234/2603. Petition of Catherine Aherne, 3 November 1931.
[164] NAI Department of An Taoiseach S.11040.
[165] NAI CCC Roscommon 1935 1D-94-20. Letter of Thomas Mannion to Elizabeth Edwards, 28 October 1934.

Conclusion

Women capitally convicted of infanticide represent the majority of women sentenced to death post-1922. This cohort of women can be understood as adhering to the *typical* template of female homicide, concerning motherhood and lethal violence. However, the mother of an illegitimate infant was considered an 'illegitimate' mother. The case of Mary Somerville herein has demonstrated that the stigma this brought could endure for decades. Despite the downgrading of unmarried motherhood, the trials of women sentenced to death for infanticide still betray the application of normative expectations of women as maternal; evident in the questioning of women by Guards and in the comments of Trial Judges. These normative standards could not accommodate the women herein, and there was little compassion for those who existed beyond these accepted boundaries. Further, the legal and social condemnation fell on the women alone, and not on the fathers.

Infanticide throughout this period carried conflicting legal and social meanings. While infanticide remained murder until 1949, in practice few women were convicted of this offence and sentenced to death.[166] While many women suspected of infanticide were shown leniency in the downgrading of the offence, the cases herein were all explicitly denied this. In this thesis, analysis of those cases of women who *were* capitally convicted can expose the aggravating features which made particular cases worthy of official opprobrium. From the analysis, these features were often related to issues of intention, and whether deaths could plausibly be classified as accidental; these questions were associated with a woman's age and experience of childbirth, or the age of the infant.

However, despite this, the 'working rule' in the Department of Justice dictated that women convicted of infanticide would be reprieved, a policy which became firm precedent. Once again, this juxtaposition of the ultimate legal censure with the expectation of mercy created tension and exposed the gap between the legal and social meanings of infanticide. There was evident cognitive dissonance in these cases; many cases herein were prosecuted vigorously and then mitigated swiftly following the passing of sentence. Commutation was often secured as a matter of urgency as it was held to be undesirable that these women should linger for long under the sentence of death.

[166] Karen M Brennan (2013) '"A Fine Mixture of Pity and Justice": The Criminal Justice Response to Infanticide in Ireland, 1922-1949', *Law and History Review*, 31(4), 793-841.

There was therefore evident sympathy for many women. However despite this, there was no urgency at policy level to reform the law on infanticide. Certainly, the importance of retaining the legal condemnation emerged when official concerns about infant mortality (more accurately expressed as official concerns about illegitimacy) heightened in the late-1920s. Analysis of the cases suggests that some women within the sample, notably Deborah Sullivan, were capitally convicted because of prevailing policy concerns which eclipsed the facts of individual cases. A more invigorated criminal justice response to these cases facilitated a more punitive legal disposal. This moral panic around illegitimacy and infant mortality could be one means of interpreting the clustering of infanticide cases in this period particularly.

The infanticide trials occurring within this period, from the late-1920s, are characterised by a sense of official concern about infant mortality/illegitimacy; Trial Judges often made explicit reference to this issue and emphasised the sanctity of infant life. However, the moral panic from the late-1920s was a rather perverse panic. Ironically, the legislation enacted during this period effectively curtailed the ability of women to control their fertility. Further, the overwhelming stigma of illegitimate pregnancy ensured that the concerns expressed were superficial. Despite the structural constraints on 'illegitimate' motherhood, there was no understanding of these offences as linked with broader social and economic considerations. Indeed, the shame felt by these women who experienced 'illegitimate' pregnancies, and the shame attached to them by society, may have provided overwhelming motivation in the infanticide cases herein.

This 'shame' was also expressed formally by the criminal justice system through the use of infanticide as a proxy for illegitimacy. The moral condemnation towards women who became pregnant outside marriage extended to legal condemnation; according to Earner-Byrne 'In essence it was a social crime to beget children outside of marriage.'[167] The overwhelming concentration on the infant victims as 'illegitimate' betrayed the true focus of infanticide proceedings. 'Illegitimate' motherhood carried a liminal status in Ireland, reinforced by the legal framework which served to marginalise unmarried mothers and their children.

[167] Lindsey Earner-Byrne (2008) 'Reinforcing the Family: The Role of Gender, Morality and Sexuality in Irish Welfare Policy, 1922-1944', *History of the Family*, 13(4), 360-369, at 364.

Without an incorporation of structural factors, which would have necessitated a more cold-eyed judgement of Irish society, the rationales for mercy which could be extended to women had to be couched in acceptable discourses. Therefore, while mercy was an inevitable outcome, the leniency shown to these women was stated as being at the individual-level and failed to incorporate the impact of structural factors. As noted earlier, Brennan argues that sympathy was available for women suspected of infanticide; but that this sympathy was understood within narrow parameters only.[168] She argues that sympathy was expressed via paternalism, which spared women's lives, but could not be read as leniency.

[168] Karen Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.

Chapter Six

Mercy

Introduction

The extensive application of mercy was a defining feature of the research herein. Of 25 women sentenced to death in Ireland post-Independence, 21 were reprieved. Only one woman was executed. This chapter explores the formal and informal process of mercy as it was extended to these women. It also provides an analysis of the rationales for mercy which were expressed from many quarters, including the jury, the Trial Judge, the Department of Justice and the public. The case of Annie Walsh (1925) is explored in greater depth to investigate why mercy was not extended in her case. In addition, the application of mercy as a function of gender is explored; how mercy operated, in part, specifically for women *qua* women. The first section presents an analysis of mercy as it operated to save condemned women, and concentrates on the period from conviction to commutation.

Formal and Informal Processes of Mercy

Mercy could be extended to women at various stages between conviction and the commutation of the death sentence. It should be acknowledged that earlier decisions, made by the Attorney General, had brought these particular cases to trial initially. As outlined in the previous chapter, in the 14 cases of infanticide, for which many women could have expected to be dealt with by way of lesser charges, mercy had explicitly been denied at this earlier stage.

This section outlines the formal and informal nature of the extension of mercy post-conviction, and the processes which could lead to the commutation of a death sentence to one of penal servitude for life; a process evident in the 21 cases of reprieved women within the sample.

Decisions on commutation of sentence were made by the Executive Council,[1] consisting of the various government ministers. The decisions on commutation were communicated, for the first decade and more following Independence, to the Governor General, and thereafter

[1] The Executive Council of the Irish Free State was the equivalent of the British cabinet.

to the President of Ireland.[2] Unlike the practice that had developed in England and Wales, under which the Home Secretary communicated decisions on commutation to the monarch, decisions in Ireland were made by the entire Executive Council, which then passed these on to the Governor General or President.[3]

The decisions which were ultimately communicated to the Governor General, and thereafter the President, were informed by the opinions of various actors in the legal process. Once convictions had been secured, there were a number of stages at which recommendations for mercy could be given or mitigating circumstances presented. A jury recommendation was the initial means of expressing a desire for leniency. Following verdict, a jury could choose to add recommendations, or riders, to verdicts, in some cases expressing a recommendation, or a strong recommendation, to mercy. For the majority of women in this sample, the jury offered such recommendations.

In the days following conviction and sentence, the Trial Judge wrote to the Department of Justice, passing on any jury riders and confiding his own views. In this correspondence, the Trial Judge could choose to endorse the jury's recommendation and discuss any aggravating or mitigating circumstances that he believed were relevant.

Of 24 women in the sample who were tried before a jury,[4] only three received no recommendation to mercy from the jury: Annie Walsh (1929), Frances Cox and Mamie Cadden. In the case of Hannah O'Leary, the jury recommendation to mercy was partial only, expressed by seven of the 12 jurors. In this case, the Trial Judge did not endorse the partial recommendation.[5] However, the Trial Judge explicitly endorsed the jury recommendations in 15 of the 21 cases, and added his own recommendation in the absence of any jury riders in the case of Annie Walsh (1929), due to doubts about her guilt.[6] There were six cases in which Trial Judges did not explicitly endorse jury recommendations:

[2] Under the terms of the 1922 Constitution of the Irish Free State, the Governor General was responsible for the reprieve of condemned persons. The office of the Governor General had replaced that of the Lord Lieutenant which had exercised this function prior to Independence, and the role of Governor General was itself replaced by Article 13.6 of the 1937 Constitution which transferred the powers to the newly established Office of the President. This role, which developed considerably throughout this period, was the equivalent role occupied by the Sovereign in Great Britain.
[3] Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006).
[4] Marie Murray was sentenced to death by the non-jury Special Criminal Court in 1976.
[5] NAI Department of Justice 18/2770.
[6] NAI Department of Justice 234/2599. Letter from Justice O'Byrne, 30 July 1929.

Hannah O'Leary, Annie Walsh (1925), Mary Lenihan, Jane O'Brien, Kate Owens and Ellen Keogh. In the case of Frances Cox, the Trial Judge said:

> In response to your request for my views … I beg to state that, in my opinion, the verdict was fully justified by the evidence. There was no defence of insanity or any suggestion of mental instability and I formed the impression the accused was normally intelligent. I do not recall any extenuating circumstances in the evidence. I cannot speak as to her background and upbringing as the evidence did not deal sufficiently with these matters.[7]

In later capital cases, Trial Judges may have felt less necessity to enumerate the rationales for mercy, as expectations that sentence would be carried out decreased with every passing year. In the 1943 case of Kate Owens, for example, the Trial Judge wrote that he had 'no comments to make on the Jury's recommendation to mercy, as I deem this to be the sole prerogative of the Minister and the Government.'[8] As an infanticide case, there was no reasonable expectation that the sentence in Owens's case would stand; there was therefore no corresponding need for arguments against such a course of action.

In every case, the recommendations of the jury and the Trial Judge were compiled as part of a memorandum in the Department of Justice, and the Minister was tasked with the dissemination of these to government ministers. Within this process, questions of leniency were paramount; the inclusion of recommendations to mercy from the jury or Trial Judge, and any additional comments from the Trial Judge were collated with any additional information to facilitate decision-making on commutation. The recommendations to mercy put forth by the jury and Trial Judges were influential. On the file of Elizabeth Hannon, a list of reasons in favour of commutation are provided, two of which were the jury recommendation, and the view of the Trial Judge that he endorsed this and, further, would have sentenced Hannon to only six months if she had instead been convicted of concealment of birth rather than infanticide.[9]

The Department of Justice also sought Garda Reports on persons sentenced to death, requesting opinion and information which could not be presented at trial, relating to local

[7] NAI Department of Justice 18/11757A. Letter from Justice Dixon, 21 December 1949.
[8] NAI Department of Justice 18/6678B. Letter from Justice Haugh, 19 May 1946.
[9] NAI Department of Justice 234/2016. Memorandum, 15 December 1927.

rumours, the background character of the women, and their family and antecedents. These unsubstantiated and often unsupported rumours tended to present an unfavourable picture of the woman or her circumstances. As a result, throughout the sample, Garda Reports were often indicative of more punitive attitudes to condemned women, more likely to caution against reprieve than the other individuals or bodies from which information was received. Occasionally, insight was sometimes sought or accepted from other persons who were considered to be in a position of authority. For example, in some cases, the Minister contacted pre-eminent legal scholars seeking opinions on the matter. In a few rare cases he sought or accepted the views of various acquaintances that lived in a particular woman's local area. In the case of Annie Walsh (1929), Cecil Lavery, the senior counsel who had acted for the prosecution, was asked to provide his opinion on the case. Lavery responded that, 'The evidence falls short of actual demonstration of guilt as is only natural but I am personally satisfied that both accused are equally guilty.'[10] He continued:

> The evidence shows clearly that both accused knew of the fatality before the discovery of the body in the morning & their subsequent conduct – perhaps the strongest evidence against them – was that of guilty persons.[11]

Voices raised on behalf of the women were also present in this cacophony of opinion. It was common for the solicitors of the condemned women to prepare petitions on their behalf which laid out comprehensive reasoning for commutation of sentence. The petitions sent on behalf of Annie Walsh (1929)[12] and Jane O'Brien,[13] had been signed by significant numbers of local persons and respected figures from politics and the church. In these cases, seemingly greater efforts were made to secure reprieve following capital conviction. The greater volume of letters within their files,[14] could reflect a public perception that these two women were particularly 'at risk' of execution. For example, Annie Walsh (1929) received no recommendation to mercy from the jury; the Trial Judge recommended reprieve only because the evidence which convicted her came substantially from children.[15] In the case of Jane O'Brien, although she received a jury recommendation to mercy based on her age and sex, this was not endorsed by the Trial Judge.

[10] NAI Department of Justice 234/2599. Letter from Cecil Lavery, Dublin, 25 July 1929.
[11] Underlining in original.
[12] NAI Department of An Taoiseach S.5904. Petition on behalf of Annie Walsh.
[13] NAI Department of An Taoiseach S.8653; Department of Justice 3/18/2737.
[14] Relative to other cases occurring around this time, these cases received more public notice.
[15] NAI Department of Justice 234/2599. Letter from Justice O'Byrne, 30 July 1929.

This ‘at risk’ rationale stems also from the nature of the murders committed by Walsh and O’Brien. Both had murdered adult men, a victim status which was viewed as more ‘serious’, and more subversive. Annie Walsh had murdered her husband, while Jane O’Brien murdered her nephew. These killings provoked particular censure. The 1929 case of Annie Walsh, in particular, echoed closely the facts of the earlier 1925 case of Annie Walsh. Occurring only four years after the execution of both Annie Walsh and Michael Talbot, this would have resonated with the public.

Further, in both these cases, Garda Reports and Department of Justice memos circulated on the decision to reprieve implicated both women in previous undetected murders. Annie Walsh was accused of killing her first husband in the US,[16] while Jane O’Brien was accused of poisoning her brother, the father of the victim John Cousins.[17] Indeed, both women were presented as particularly unsympathetic within many official documents. In addition to this, the date of the murders in 1929 and 1932 respectively, occurring earlier within the sample, also made commutation a more contested, and less readily assumed, decision.

Rationales for Mercy

Motivations for mercy fell along formulaic lines. Lizzie Seal noted five themes articulated in public responses to condemned persons: doubt, mitigation, arbitrariness, inequity and retributive objections to reprieve.[18] Within the current sample, mitigation was most frequently invoked, in which personal features of the condemned woman were cited as justifications for mercy.

Gender was a commonly cited factor. Similarly, the age of women, too old or too young, was sometimes invoked. Many women were characterised as ‘weak-minded’, particularly in cases of infanticide, where the effect on the mind of giving birth also tended to be introduced in mitigation. Another factor which was linked specifically to gender was motherhood, and many women were viewed as deserving of mercy because of their maternal role. Beyond these, the poor circumstances of some women provided pleas for the

[16] NAI Department of Justice 234/2599. Confidential memo, 4 July 1929.
[17] NAI Department of Justice 18/2737A. Garda Report by C Halloran, from his recollection of the case, 11 June 1932.
[18] Lizzie Seal, *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory* (Routledge 2014).

tempering of sentence, for example in the case of Elizabeth Doran, judged to be 'in poor circumstances',[19] and in the case of Mary Lenihan, whose age and circumstances were jointly invoked.[20] The pernicious influence of others was cited in a number of cases, always the pernicious influence of men. These rationales tended to be grounded in the character of the woman herself, or in her circumstances. In some cases, legal reasons were adduced, such as the reliance on circumstantial evidence. From an overview of the rationales for mercy, it is evident that humanitarian reasons were explicitly invoked in a minority of cases only, although many of those which could be classified under the above headings seemed to emanate from humanitarian concerns. However, these specific humanitarian concerns related to individual women, and there were few cases which questioned the fact of capital punishment per se.

Age

As mentioned in Chapter Four, recommendations for commutation of sentence could be grounded by reference to the age of women, and were applied to women aged in their 20s and for women aged 50 and over. Age could therefore be invoked in a great many cases.

Mary Lenihan was the oldest women within the sample. Lenihan's trial saw arguments about her age on both sides; her age betokened experience, but her age was also used to suggest frailty, with defence counsel asking direct questions about her mobility, and use of a stick. In his charge to the jury, the Trial Judge also referred to Lenihan dismissively as 'the old woman'.[21] The press reporting of Lenihan also referenced her age, with various newspapers referring to her as 'old woman'.[22] When convicted, the jury recommended her to mercy based on her 'age and circumstances.'[23] Indeed, the case of Mary Lenihan demonstrates how sympathy derived from age could be translated into mercy, in the form of her ultimate acquittal. Mary Lenihan was found guilty on 30 November 1928 of the infanticide of her great-grandchild, the infant of her granddaughter Hannah Lenihan. Her conviction was set aside by the Court of Criminal Appeal on 18 December 1928, which held that Hannah Lenihan's evidence should be considered uncorroborated accomplice

[19] NAI Department of Justice 234/1297. Memorandum by TA Finlay, 19 June 1926.
[20] 'Grandmother Sentenced to Death' *Irish Times* (8 December 1928).
[21] NAI Court of Criminal Appeal (hereinafter 'CCA') 30/1928. Trial Judge's Charge to the Jury.
[22] 'Rockchapel Murder Charge: Old Woman sent for Trial' *Irish Examiner* (14 July 1928); 'Great-Grandmother's Awful Crime' *Kerryman* (8 December 1928).
[23] NAI CCA 30/1928.

evidence, and a warning provided to the jury accordingly.[24] At the retrial, the jury could not reach a verdict. In Lenihan's second retrial, she was acquitted. It is suggested that the protracted period over which the two retrials unfolded garnered sympathy for Mary Lenihan. This sympathy built on the protective factor of her age, which had already grounded her recommendation to mercy in the first trial. One newspaper account stated that this 'unhappy old woman has had a unique ordeal'.[25]

'Low Mentality'

Recommendations to mercy could also be justified by reference to the stated 'low mentality' of the women. 'Low mentality' was explicitly referenced by the jury in the case of Hannah Flynn, in which the recommendation was 'grounded on the fact that [her] mentality was stated to be defective.'[26] These judgements were often reinforced by the views of the Prison Medical Officers in Mountjoy Prison. The introduction of arguments that the women were 'weak minded' diminished their culpability by suggesting a lack of understanding. The reporting of 'low mentality' arguments in newspapers often prompted members of the public to pick up the thread.[27] One letter writer appealed on behalf of Elizabeth Doran on the basis that 'I understand she is weak minded'.[28] Some women considered 'weak minded', like Hannah Flynn, were also judged to be at risk from the effects that a sentence of death would wreak on the mind. The Trial Judge in Elizabeth Hannon's case urged commutation 'at the earliest moment' due to the strain of the sentence.[29] In the case of Agnes McAdam, the Trial Judge reported similar concerns, citing her 'peculiarity'.[30] Agnes McAdam's case attracted considerable sympathy on these grounds; one woman wrote to the Department of Justice to say that she had gone to the courthouse in Dundalk to hear preliminary evidence in the case and had found Agnes to be of 'abnormal temperament'.[31] This was one of many letters expressing the view that she was 'not normal mentally', as one letter writer from Agnes's local village of Ballybay

[24] NAI Central Criminal Court (hereinafter 'CCC') Cork 1929-1931 1C-94-55; *Attorney General v Mary Lenihan* [1929] 63 ILTR 30.
[25] 'Mary Linehan' *Irish Examiner* (23 May 1929).
[26] NAI Department of Justice 18/2769A.
[27] For example, 'Called for the defence, Mr Balle said [Elizabeth Doran] was abnormal and of a low order of intelligence.' See 'Woman Sentenced to Death' *Irish Examiner* (4 June 1926).
[28] NAI Department of Justice 234/1297. Letter, unsigned, from Terenure, Dublin, 25 June 1926.
[29] NAI Department of An Taoiseach S.5571. Letter from Justice Johnston, 12 December 1927. Underlining in original.
[30] NAI Department of Justice 18/9074A. Letter from Justice Gavan Duffy, 16 February 1946.
[31] NAI Department of An Taoiseach S.13804. Letter from Maura MacKeown, Dundalk, 30 March 1946.

termed it.[32] One writer suggested an alternative version of events which implicated Agnes's brother:

> Could the poison have been inserted in the cake taken from the wall by Patrick McAdams [sic] with whom perhaps Agnes did not live on good terms his motive being to get rid of her. This supposition is made by the play Uncle Harry produced at Gaiety last summer. In this play the brother poisons one sister & weaves the case so well against his other sister who is found guilty & executed that his own confession of the guilt is disbelieved.[33]

These arguments of low mentality and abnormality were tenuous rationales for mercy based on pathology.[34] This was evident in the case of Mary Agnes Bernadette Daly also, in which the Trial Judge expressed the view that she was 'a very highly strung young woman', who could not endure the shadow of death for many months.[35]

Motherhood

The maternal role of various women also grounded calls for mercy. In a petition written by Annie Walsh (1929), she appealed for mercy on behalf of her children, arguing that 'The shame that their mother was hanged will follow my unfortunate children forever and I do wish to spare them this disgrace and live for their sake.'[36] In the case of Mary Somerville, one letter writer argued that 'Any <u>mother must</u> understand the woman's impulse to shield her <u>own</u> young daughter of 18 years.'[37] Somerville, who had been convicted of the murder of her daughter's illegitimate child, was judged by some letter writers to have acted in the best interests of her daughter, evident in one appeal from the Society for the Abolition of the Death Penalty which stated that 'the grandmother's motive – to save her daughter from disgrace – was not wholly selfish.'[38] Another letter placed Somerville's gender, and her duties arising from motherhood, as motivations which could not be fairly judged by men:

---

[32] NAI Department of Justice 18/9074A. Letter from a resident of Ballybay, 8 April 1946.
[33] NAI Department of Justice 18/9074A. Unsigned, 16 February 1946.
[34] Discourses of pathology are discussed in greater depth in Chapter Eight.
[35] NAI Department of Justice 170/7622. Letter from Justice Gavan Duffy, 2 May 1949.
[36] NAI Department of Justice 234/2599 Annie Walsh (1929). Handwritten petition of Annie Walsh, 30 July 1930.
[37] NAI Department of Justice 18/3110A. Letter from Mrs Hungerford, United Arts Club, 12 December 1938. Underlining in original.
[38] NAI Department of Justice 18/3110A. Letter, 13 December 1938.

> It would be impossible for any man to put himself in a woman's place, but oh I wish you would just ask your wife if she was an old forlorn widow, friendless & alone, with one little daughter aged seventeen, & no friends to help, or husband to advise her, & no means of hiding her child's disgrace, doesn't she think any women might become temporarily quite insane? I wish you would ask Mr. Justice O'Byrne & the Chief Justice to ask their wives the same question? All laws, of every country, Your Excellency, are made by men for men, & are as a rule, well made, but there is something wrong in the law that allows a seducer to get scot free, & a poor demented mother to be hanged.[39]

In the case of Mary Agnes Bernadette Daly, who was convicted of the murder of an older woman in a Dublin church, most likely in an attempt to steal her handbag, motherhood was again a strong feature in favour of mitigation. One letter writer stated, 'She could not desert her Baby, whose duty was it to feed her & her Baby & pay rent & keep her a home.'[40] Some appeals on behalf of a woman's motherhood came from mothers also, and this fact was explicitly referenced, such as in a letter from a woman on the Daly case, 'I am too busy to write much more & feel compelled, after bathing my little family tonight, to sit down and write this little letter to you.'[41] Daly's motivation was perceived as financial gain to support her husband and child, a motivation which rendered her more relatable.

John Carter Wood, in his examination of the letters sent to Beatrice Pace following her acquittal for the murder of her husband in England in 1928, noted that a majority of letter writers were women, and a substantial proportion of the writers identified with Pace as a woman, and as a mother.[42] Similarly, Seal, in her analysis of the press treatment of Edith Chubb, convicted of murdering her sister-in-law, demonstrated the power of respectable motherhood to mitigate moral outrage.[43]

The recourse to gender, evident in appeals to a woman's motherhood, and in specific references to the uniqueness of women's lived experiences, was also evident in the case of Jane O'Brien in which her petitioners cited the lack of female representation on juries, it

[39] NAI Department of An Taoiseach S.11040. Letter from 'A Citizen of Waterford', 10 December 1938.
[40] Department of Justice 170/7622. Letter, unsigned, dated 28 November 1948.
[41] Department of Justice 170/7622. Letter, unsigned, dated 27 November 1948.
[42] John Carter Wood, '"Those who have had trouble can sympathise with you": Press Writing, Reader Responses and a Murder Trial in Interwar Britain', *Journal of Social History*, 43(2), 439-462.
[43] Lizzie Seal (2009) 'Issues of Gender and Class in the Mirror Newspapers' Campaign for the Release of Edith Chubb', *Crime Media Culture*, 5(1), 57-78.

was argued that 'as there was no woman on the Jury, it could not be maintained that the prisoner was tried by her peers.'[44] Appeals based on the experience of womanhood find 'special connection… on the basis of their shared femininity',[45] an experience held to be alien to and beyond the understanding of the male actors involved in the criminal justice arena in which the women were condemned.[46]

The Influence of Men: Infanticide and Failure to Provide

There was some evidence that men were blamed for the actions of women. This was made most explicit in cases of women convicted of infanticide. In these cases, many of the letter writers expressed the view that it was unconscionable that a woman should be held culpable when the father of the infant received no censure whatsoever. These views shared a common understanding of the woman as wronged and gullible, and of the man as predatory. Such codification of gender roles argued for individual-level mercy but enshrined a paternalistic conception of women.

In the case of Ellen Keogh, the jury rider explicitly made reference to the influence of another.[47] Keogh was capitally convicted on 29 April 1944 for the murder of her infant; the jury rider expressed the view that she had 'in the circumstances, no option but to aid and abet'. This was a reference to John Mitchell, the father of the infant, charged with Keogh for the same offence, but tried separately. The jury had perceived a need to 'save' Keogh because the Trial Judge had foreclosed the possibility of a manslaughter verdict, arguing that 'There does not appear to be any opening for a finding of manslaughter.'[48] The Trial Judge stressed that either she was wholly innocent or wholly guilty and would be liable for the death of the child if it was part of a pre-agreed scheme, even if she had not touched the child. The jury rider therefore constituted 'reasonable doubt', which led to the quashing of

[44] NAI Department of Justice 18/2737A. Petition on behalf of Jane O'Brien.
[45] Lizzie Seal (2011) 'Ruth Ellis and the Public Contestation of the Death Penalty', *Howard Journal of Criminal Justice*, 50(5), 492-504.
[46] Ireland should not be considered an isolated outlier in the matter of women's participation on juries. Anne Logan has noted that although the Sex Discrimination (Removal) Act 1919 allowed for women on juries, gender equality on juries was actually not achieved in England and Wales until 1974. This delay in achieving parity of representation was caused by the rules for jury qualification which were linked to property ownership, the use of peremptory challenges and the discretion of the Trial Judge to request single-sex juries in particular trials. See, Anne Logan (2013) '"Building a New and Better Order?" Women and Jury Service in England and Wales, c.1920-70', *Women's History Review*, 22(5), 701-716.
[47] NAI CCA 56/1944.
[48] NAI CCA 56/1944. Trial Judge's Charge to the Jury.

Ellen's conviction.[49] At her retrial, she pleaded guilty to manslaughter. There was evident sympathy for Keogh in some quarters, although not in others. She was viewed by the jury as a submissive partner in the commission of the crime. This was complicated by the acquittal of John Mitchell at his trial, which rendered the jury's rider somewhat paradoxical. In John Mitchell's first trial, 11 of the 12 jurors voted to find him guilty. The jury was absent for over seven hours before they returned and announced that they were unable to make a decision. At Mitchell's retrial, the jury was absent for only 15 minutes before they returned with an acquittal. The previous inability to reach a verdict and Ellen Keogh's interim conviction for murder may have been persuasive in this acquittal.[50] This created a somewhat anomalous position; sympathy was extended by the jury to the female participant in view of the larger part played by the male participant, however the male participant escaped legal censure. Mercy grounded in the perceived malign influence of a man did therefore play a role in the quashing of Keogh's conviction. The mercy extended by the jury's rider was the only ground of appeal and it contained enough uncertainty to lead the Court of Criminal Appeal to quash her capital conviction. However, her case represents a dichotomous presentation, as the Trial Judge remained unsympathetic and the jury chose not to acquit. Ellen herself expressed it bitterly while in prison, 'it is terrible to think Mitchell is out and I here for his crime.'[51] A Department of Justice document went further, claiming that the 'ultimate result of the case was that Mitchell who was really the principal got off scot-free while the accomplice Mrs Keogh is serving a term of three years' penal servitude.'[52]

Other infanticide cases all drew questions as to the involvement and role of the father, such as one letter from Canada on the case of Elizabeth and Rose Edwards which queried 'what of the father of the child'.[53] Another on the same case asked 'How many unfortunate innocent girls has [sic] been and is every day "let down" by cowardly skunks of men who run away and hide when the harm is done?'[54] One letter from England on the case of Margaret Finn made more explicit the paternalism of this viewpoint, stating 'I need not

[49] *Attorney General v Ellen Keogh* [1944] 1 IR 309.
[50] NAI Department of Justice 18/7448.
[51] NAI Department of Justice 18/7448A. Letter from Ellen Keogh, 30 May 1944.
[52] NAI Department of Justice 18/7448A. Department document, undated.
[53] NAI Department of Justice 18/885A. Letter from Canada, enclosing newspaper clipping, 20 May 1935.
[54] NAI Department of Justice 18/885A. Letter from John Joseph Fitzpatrick, 31 March 1935.

remind you how important it is for the state to protect its weaker members against callous, and wicked men, who bring ruination on them.'[55]

Beyond cases of infanticide, there were other letter writers who also brought blame to the door of men. Mary Agnes Bernadette Daly's husband was criticised for his failure to provide, 'where is the man who brought her to this state in life to commit such a deed.'[56] The exclusion of married women from the workforce, along with the tendency to minimise the contribution that women and children made to the family economy, and the construction of normative femininity as marriage and motherhood, meant that the concept of the 'breadwinner' was understood as solely male. It was expected that a husband would earn a family wage.[57]

Legal Reasons and Doubt

The above reasons were vested in the character of the condemned woman, or in her circumstances. However, pleas for mitigations were grounded in legal reasoning, either logistical or substantive, for example in the claims in some cases that the evidence was entirely circumstantial. Hannah Flynn's solicitor argued that they had been given insufficient time to prepare the case.[58] Another rationale deriving from legal factors included a plea on behalf of Mamie Cadden based on the manner in which the *mens rea* requirement for murder was met, through the antiquated doctrine of constructive malice.[59]

There were a number of cases, such as that of Mary Moynihan and Annie Walsh (1929) in which mercy was partially motivated by concerns as to the guilt of the woman. In the case of Mary Moynihan, a juror expressed this doubt to the Department of Justice following conviction; he was described by the Department as experiencing 'qualms of conscience'.[60] Even the Trial Judge, in his confidential remarks to the Department, expressed some doubt in this case: 'The evidence against her was entirely circumstantial and it is possible that the fatal blows were not inflicted by her.'[61] He instead suggested that even if she had delivered

[55] NAI Department of Justice 234/3118. Letter from Reverend P O Naoiliauin, The Friary, Berkshire, 22 March 1931. Underlining in original.
[56] NAI Department of Justice 170/7622. Letter, unsigned, 28 November 1948.
[57] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).
[58] NAI Department of Justice 18/2769A. Letter from Ernest W Proud, 29 February 1924.
[59] NAI Department of Justice 18/3562. Letter from Justice McLoughlin, 28 December 1956.
[60] NAI Department of Justice 234/1744. Handwritten note, 18 December 1924.
[61] NAI Department of Justice 234/1744. Handwritten note from Justice Sullivan to Minister for Justice, 17 December 1924.

the blows, she could have been acting under the influence of Jeremiah Horgan, the victim's husband, and the man she had implicated in the dock following verdict.[62] In cases such as these, where the guilt of the woman was raised as a real doubt, further reports were sought. In the case of Mary Moynihan, a comprehensive review of the evidence returned the same verdict as the trial.[63] However, the doubt as to the influence of Jeremiah Horgan weighed heavily in the establishment of sympathy for Mary Moynihan. In the Annie Walsh (1929) case, the Trial Judge remarked that 'it seems to me that they should suffer the extreme penalty.'[64] But he then went on to suggest that as the prosecution case rested on the evidence of children there was sufficient doubt to justify the prerogative of mercy.[65] In this case also, the local community remained convinced that the victim, Sonny Dan Walsh, had met his death by natural causes.[66]

Religion

Religion played a role in petitions for commutation also. In 1932, the Catholic Church gathering known as the Eucharistic Congress was held in Ireland. This was also the year in which Jane O'Brien was sentenced to death; in a case with few mitigating features the fact of the Congress featured heavily. The Archbishop of Dublin wrote that:

> I understand that there is a woman at present in Mountjoy jail under sentence of death for murder. I hope I will not seem to presume too much if I ask you to consider the question of granting a reprieve in her sentence. I feel that an execution would cast a sinister shadow over the glorious celebrations of the Congress and I think that an act of clemency would come most appropriately at this time. I am not familiar with the facts of the case and base my appeal solely on the grounds of mercy and consideration for the sacred festivities of the Congress.[67]

These rationales were grounded on arguments of appropriateness and timing, rather than humanitarian grounds or fundamental objections to the death penalty. Another letter, printed in the *Irish Press*, argued 'it would not be in keeping with the spirit of the Congress

[62] NAI Department of Justice 234/1744.
[63] NAI Department of Justice 234/1744. Report prepared by TA Finlay, 24 March 1925.
[64] NAI Department of Justice 234/2599. Letter from Justice O'Byrne, 30 July 1929.
[65] NAI Department of Justice 234/2599.
[66] NAI Department of An Taoiseach S.5904. Petition on behalf of Annie Walsh.
[67] Department of Justice 18/2737A. Letter from Archbishop of Dublin Edward Byrne, 25 June 1932.

that any unfortunate prisoner should, during its progress, lie under sentence of death'.[68] The correspondence of individual religious leaders sometimes offered more substantial 'Christian' opposition to the death penalty. The Bishop of Galway wrote on behalf of Annie Walsh (1929) and Martin Joyce, quoting the conviction of local people that the death had been accidental, 'I believe that there is a possibility, one might even say a probability, of mistake.'[69] However, even this takes as its premise the innocence of the condemned persons, rather than principled objections. The prizing of religious considerations above humane ones is evident in one letter sent regarding Mamie Cadden; the writer appealed that Cadden be given more time to repent in order to avoid dying in a state of mortal sin, however he concluded, 'if she turns back to God before Wednesday next then Sir by all means let the law take its course.'[70]

Garda Reports

The function of Garda Reports throughout the sample appeared to indicate the role of respectability and the importance of the family of condemned women. Seal noted appeals to respectability in letters sent regarding condemned persons in Britain in the period 1930 to 1945.[71] In this vein, the mechanisms by which certain persons were identified as worthy of reprieve differed little from those eighteenth-century conceptions of respectability identified by Douglas Hay.[72] Nicola Lacey too has noted how the association of status and supposed character governed understandings of criminal responsibility in the eighteenth-century.[73] Lacey found that the growing acceptance of theories which situated culpability at an internal level, with the development of pathologised explanations of offending, severed somewhat this straightforward link, but the notion of character, often informed by links to respectability, remained evident throughout much of the nineteenth-century, and was also evident in appeals for mercy within the current sample, such as the solicitor's appeal for bail for Mary Agnes Bernadette Daly on the basis that 'she was a respectable

[68] 'Letters: Appeal for Prisoner' *Irish Press* (21 June 1932). Letter from Roise Nic Sheamuis, Dublin.
[69] NAI Department of Justice 234/2599. Letter from Thomas O'Doherty, Bishop of Galway, to the Minister for Justice, 29 July 1929.
[70] NAI Department of Justice 18/3562. Letter from Aidan David Rogers, 17 November 1956.
[71] Lizzie Seal (2014) 'Imagined Communities and the Death Penalty in Britain, 1930-1965', *British Journal of Criminology*, 54(5), 908-927.
[72] Douglas Hay, 'Property, Authority and the Criminal Law, in D Hay, P Linebaugh, JG Rule, EP Thompson and C Winslow, eds, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (Allen Lane 1975).
[73] Nicola Lacey, *Women, Crime and Character: From Moll Flanders to Tess of the D'Urbervilles* (Oxford University Press 2008).

lady.'[74] The Garda Report on Mary Kiernan firmly linked the notion of respectability with class and family connections:

> Nothing was ever known against her parents or any other member of the family. Her relatives from father's and mother's side are all very respectable people. Some of them are shop-keepers in Edgeworthstown while others are respectable, well-to-do farmers in that district.[75]

Alternatively, Garda Reports often presented arguments counter to mercy. In the case of Jane O'Brien, a number of Garda Reports, and one letter from the Garda Commissioner, expressed views contrary to commutation:

> The murder was fully premeditated, carefully planned and carried out with great callousness. To add to the horror of the crime, the murdered man was the assassin's nephew. I have gone through the reports fully and I can find no reason why the law should not be permitted to take its course in this case.[76]

In a separate Garda Report, it was noted that 'The local people appear to have no sympathy for the accused and are indifferent as to the punishment which may be awarded.'[77] In the case of Elizabeth and Rose Edwards also, the Garda Report noted that 'anything in the nature of a too-generous commutation of sentence will undoubtedly negative the work that has been put into this case.'[78] The body of the infant victim in this case had never been recovered, despite weeks of searching which expended considerable resources; the need to justify such efforts is evident in the Garda correspondence. As noted above, documents emanating from the Garda Síochána were more likely to stress the aggravating features in each case.

Family and Community

Letters appealing for commutation from family members of the condemned women were not a universal feature. One condemned woman who benefited from such support was Elizabeth Doran, whose son wrote, 'We all beg your mercy to spare my mother from

[74] 'Attack in Dublin Church' *Irish Independent* (12 August 1948).
[75] NAI Department of Justice 234/1491. Garda Report.
[76] NAI Department of Justice 18/2737A. Letter from Garda Commissioner, 14 June 1932.
[77] NAI Department of Justice 18/2737A . Garda Report, 11 June 1932.
[78] NAI Department of Justice 18/885A. Garda Report, 2 April 1935.

hanging.'[79] The sister of Annie Walsh (1929) also petitioned on her behalf.[80] In the case of Agnes McAdam, a letter sent on her behalf by a Senator was apparently motivated by overtures made to him by her family.[81] However, the failure of family support was referenced explicitly by Hannah Flynn's defence counsel as a fact in mitigation of her actions; her counsel was very critical of the failure of her family to travel to Dublin for the trial, he wrote that 'Not one of these moved to help her.'[82] This was despite his acknowledgement of the poverty of the family and the hardship such travel would have caused. The case of Mary Agnes Bernadette Daly is the sole instance in which the family of the victim petitioned for clemency; the grown children of the victim Mary Gibbons, wrote that if sentence of death was waived, Daly should be given the minimum sentence and allowed to re-join her husband and child. This letter also presented the words of their mother, effectively providing an appeal to commutation from the victim herself, 'I bear her no illwill [sic] – the poor creature, she did not know what she was doing.'[83]

The case of Annie Walsh (1929) provides an example of a groundswell of support from the local community.[84] Much of the discourse on this case referred to the claim that the deceased, Sonny Dan Walsh, was the victim of an accidental death. Sonny Dan had been found face down in a stream, on the mountainside near his home. Initially his death had been ruled accidental and was only investigated more fully following the persistent pleas of his family which sought to implicate his widow and Martin Joyce. The grassroots popular support enjoyed by Walsh and Joyce is given some context in a Garda Report,[85] which claimed that the momentum was largely a function of the animosity felt towards the family of the victim.[86] The campaign was spear-headed by the local Parish Priest, their

[79] NAI Department of Justice 234/1297. Letter from Thomas Doran, 22 June 1926.
[80] NAI Department of Justice 234/2599. Letter from Massachusetts, US, 8 October 1931.
[81] NAI Department of Justice 18/9074A. Letter from Senator Seamus Johnston, 9 April 1946.
[82] NAI Department of Justice 18/2769A. Memorandum from Michael J Lennon to Minister for Home Affairs, 1 March 1924.
[83] NAI Department of Justice 170/7622. Letter, 15 November 1948.
[84] NAI Department of An Taoiseach S.5904. Petition on behalf of Annie Walsh.
[85] NAI Department of Justice 234/2599. Garda Report, received 3 July 1929.
[86] This case bears some similarities with that of Beatrice Pace, acquitted of the murder of her husband by arsenic poisoning in 1928 in England. The suspicions of the deceased's family had prompted police investigations as the funeral was halted to allow for a post-mortem investigation. In the case of Annie Walsh (1929), the death had initially been ruled accidental, and it was only after many months had passed and the family of Sonny Dan had petitioned the Garda Síochána from both Ireland and the United States that further investigations were commenced. The Walsh family had suspected Annie Walsh and her relative Martin Joyce, and the body was initially exhumed because of their concerns that Sonny Dan had died due to poisoning. The Pace case also bears some resemblance to that of Frances Cox, within the current sample, who was convicted of the murder by strychnine poisoning of her brother Richard; Richard's funeral too was

elected representative and a local businessman who sought to oppose the influence of the Walsh family.

Other Rationales

In the case of Jane O'Brien, a 'hard case' in which no obvious mitigating features presented themselves, the utilitarian purpose of punishment was cited; in a petition presented on her behalf, the 'unusual' nature of the crime was held to render it unsuitable for capital punishment as 'the necessity of drastic deterrent action does not arise.'[87]

In some cases, the patriotism of the condemned women or their families was referenced. In the case of Elizabeth and Rose Edwards, one letter writer wrote that Elizabeth had 'fought for Ireland',[88] and 'answered the call when girls were needed to help the boys.'[89] In this case, the letter writer also appealed to the experience of the Governor General who had himself been imprisoned for his part in the Easter Rising of 1916.[90] A person writing on behalf of Mary Agnes Bernadette Daly wrote to the Minister for Justice that 'I am sure that as one who once received a death sentence yourself you will not treat this appeal lightly.'[91] Other letter writers appealed to the humanity of the Minister for Justice, evident in a letter from legal scholar John Kelly, in which he petitioned the Minister that 'I am aware that you, Sir, are personally opposed to the death penalty'.[92]

The persuasive function of letters sent regarding death-sentenced women is crucial to understanding the use of such entreaties; letters were sent with specific purposes in mind, and Seal has noted that as a result, letters writers would 'deploy shared meanings… draw on personal experiences, and make direct appeal'.[93] Such tactics are evident in rationales based on the personal experiences of government figures. The conceptual association of capital punishment and the infliction of capital punishment by the British are again evident

---

halted on foot of Garda suspicion. See John Carter Wood, '"Those who have had trouble can sympathise with you": Press Writing, Reader Responses and a Murder Trial in Interwar Britain', *Journal of Social History*, 43(2), 439-462.

[87] NAI Department of An Taoiseach S.8653. Petition sent by MJ O'Connor and Company Solicitors, Wexford to the Minister for Justice, 13 July 1932.

[88] NAI Department of Justice 18/885A. Letter from John Joseph Fitzpatrick 19 May 1935.

[89] ibid.

[90] NAI Department of Justice 18/885A.

[91] NAI Department of Justice 170/7622. Letter, unsigned, 28 November 1948.

[92] NAI Department of Justice 18/3562. Letter from John Kelly, Pembroke College Oxford, undated.

[93] Lizzie Seal (2011) 'Ruth Ellis and the Public Contestation of the Death Penalty', *Howard Journal of Criminal Justice*, 50(5), 492-504, at 492.

in these exhortations. Appeals for mercy based on patriotism return to the idea of the death penalty in Ireland as a British invention.

Gerard O'Brien has pointed out that this mind-set involved a form of selective memory which omitted the fact that most of those executed prior to Independence had been ordinary criminals.[94] Moreover, the appeal to the revolutionary pasts of Ministers, Governor Generals, and the family of the condemned is an example of Seal's use of the concept 'imagined communities', in which, in this specific case, the common Irish identity is evoked.[95]

Public Responses

The volume of letters received on behalf of each condemned woman was in part reflective of the newspaper coverage of the trials.[96] Those cases which provided novel circumstances also garnered greater column inches and were more likely to entice members of the public to put pen to paper. Wood noted, in his writing on the case of Beatrice Pace, that the newspaper accounts necessarily framed the information received by the public.[97] Seal has argued, regarding the letters received on the case of Ruth Ellis, that rather than newspaper discourse leading public discourse, reporting was 'painted from a shared cultural palette' which relied on cultural touchstones held by readers and writers alike.[98] The sentiments expressed about each case in newspapers therefore were often shared by the readers of the newspapers, and community-level ways of understanding were at work. However, as noted by Seal also, public responses are 'elusive', and the researcher must be cautious when attempting to glean public sentiment from the letters received on capital cases.[99]

Throughout the newspaper reporting and the letters calling for reprieve within the current sample, however, a cohesive abolitionist thread is lacking. There was little sustained

[94] Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson (ed) *Reflections on Law and History* (Four Courts Press 2006).
[95] Lizzie Seal (2014) 'Imagined Communities and the Death Penalty in Britain, 1930-1965', *British Journal of Criminology*, 54(5), 908-927.
[96] It should be acknowledged that the public response has been analysed from the extant letters. As referenced in the 'Limitations' section of the Introduction to this thesis, the pitfalls of archival research include the likelihood that some materials have been destroyed or lost.
[97] John Carter Wood, *The Most Remarkable Woman in England: Poison, Celebrity and the Trials of Beatrice Pace* (Palgrave Macmillan 2012).
[98] Lizzie Seal (2011) 'Ruth Ellis and the Public Contestation of the Death Penalty', *Howard Journal of Criminal Justice*, 50(5), 492-504, at 494.
[99] Lizzie Seal, *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory* (Routledge 2014) at 99.

momentum in Ireland on the matter of the reform or abolition of capital punishment. Throughout the sample an eclectic array of organisations corresponded with government on the issue, groups such as the Religious Society of Friends, the Society for the Abolition of the Death Penalty,[100] the Irish Association for Civil Liberty, the Irish Women Workers Union, the People's Rights Association, the Gaelic League and Old Cumann na mBan. High profile individuals also made their voices heard, such as Senator Owen Sheehy-Skeffington who appealed for Mamie Cadden, on more humanitarian grounds than was typical:

> I am morally certain that you and the Cabinet will decide to commute the sentence of death on Miss Cadden. I am writing this letter merely to say that I am convinced that in so doing you will be acting with the approval of a very wide section of public opinion. My own feeling is that our society would lose a measure of self-esteem and degrade itself if by its actions this wretched creature were to be hanged.[101]

On the more high-profile case of Marie Murray, prominent campaigners from Britain also occasionally made their voices heard. Lord Longford made contact with the embassy in London asking that his enquiries be passed to the Taoiseach,[102] while the leader of the Liberals, David Steele, MP, argued that to proceed with the executions would be inhumane and would only exacerbate the political violence prevailing at that time.[103]

While there was no evidence of a feminist-inspired motive behind appeals for reprieve, there were isolated feminist voices among the sample. Commenting on the case of Elizabeth and Rose Edwards, Hanna Sheehy-Skeffington, in letters to both the *Irish Times* and the *Irish Independent*, noted that no women had sat on the jury under the 'barbarous male code'; however, her suggestion that in cases of infanticide juries should include mothers, continued in the prioritisation of certain forms of knowledge over others, in this

[100] This organisation was founded in 1937 by Rosamond Jacob and John Henry Webb, who were Dublin-based Quakers, O'Brien writes that the history of the organisation was short and unsuccessful. Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson (ed) *Reflections on Law and History* (Four Courts Press 2006).
[101] NAI Department of An Taoiseach S.16116. Letter from Senator Owen Sheehy-Skeffington, 1 January 1957.
[102] NAI Department of Foreign Affairs 2006/133/700. Letter from Irish Embassy in London, 19 July 1976.
[103] NAI Department of Foreign Affairs 2006/133/701. Telegram, 17 September 1976.

case the female experience of maternity.[104] Letters were also received from female organisations, such as the Irish Women Worker's Union or Old Cumann na mBan, representing the labour movement and the Republican cause. Further, some letters pleaded clemency citing the hardship of women's lives, particularly relating to the stigma of illegitimacy and motherhood. Two letters cited the importance of female subjectivity and suggested this as a frame of reference for understanding the actions of the condemned women. This was contrasted with the all-male courtrooms in which the women had been convicted, and the male politicians who drafted legislation.

The levels of press coverage achieved by each case also went some way towards shaping the response from the public.[105] A telegram from an Irishman living in England expressed the alleged feelings of other Irish persons in his local area that the death penalty was inappropriate in the case of Agnes McAdam.[106] Similarly, a letter from an Irishman who was a member of a religious order in England, wrote regarding Margaret Finn that 'It is the opinion of several Irishmen here that the penalty is most drastic'.[107] There were some international letters throughout the sample, two letters from Canada on behalf of Elizabeth and Rose Edwards following the report of their sentence in a Canadian newspaper demonstrated that public interest was inextricably bound up with the necessity of publicity; this letter also warned that the execution would be 'a blot on Ireland's fair name that will last for fifty years.'[108] These letters betoken both the cultural significance of newspaper reporting on Irish issues for the Irish abroad, and the view of Ireland from abroad, both of which featured in appeals for mercy.

An International Response: Marie Murray

Such appeals to avoid a 'blot' on the national character were particularly plentiful in the 1976 case of Marie Murray. A letter from a couple in Michigan threatened that they were compiling articles from newspapers on the case and intended to circulate it to US newspapers to prevent people holidaying in Ireland, 'Taking a trip to Eire – spending

[104] 'Letters to the Editor: Infanticide' *Irish Times* (23 May 1935).
[105] Wood noted this in his analysis of the case of Beatrice Pace also, acquitted of the murder of her husband in 1928. John Carter Wood, *The Most Remarkable Woman in England: Poison, Celebrity and the Trials of Beatrice* (Manchester University Press 2012).
[106] NAI CCA 16/1946. Telegram from 'Smith', Bath to Lord Chief Justice, 11 March 1946.
[107] NAI Department of Justice 234/3118. Letter from Reverend P O Naoiluain, The Friary, Berkshire, 22 March 1931.
[108] NAI Department of Justice 18/885A. Letter from Canada, enclosing newspaper clipping, 16 May 1935.

money there – is at this time tantamount to "supporting, with financial or other aid, this violence" as your communiqué so aptly phrased it,' referring to an appeal by the Taoiseach that US citizens should desist from assisting in the Republican cause.[109] Another letter from Switzerland suggested 'boycotting Ireland as a tourist country.'[110] The public interest in Marie Murray and Noel Murray's case provided a stark example and received a truly international response, letters were written in many languages from all over the world, by a wide spectrum of writers, often as part of an organised letter writing campaign. These letters were unusual also because arguments for mercy were grounded in more abstract concerns such as the nature of a civilised society, abuses of power and rational concerns about the effectiveness of the death penalty. The case was viewed primarily through a prism of politics and letter writers' general views on the death penalty mostly aligned along humanitarian lines, for example statements that it 'degrades all those who take part in it',[111] or that 'It achieves nothing and demoralises and degrades a country'.[112] One letter from a 'Worried Mother' stated 'I'm just an ordinary housewife… I am really sick with worry and not eating either', the writer stated that only God could take life and further argued that execution in such cases would only make martyrs for the IRA.[113]

There was some sympathy too regarding Marie Murray's background; one letter writer addressed the Taoiseach and President that, 'if Marie Murray had had your childhood and upbringing or Mr Cosgrave's, or Mr Cosgrave's daughter's – or mind, would she be what she is to-day!'.[114] The letters appealing for clemency for Marie and Noel Murray threw up a variety of oft-repeated concerns, including one persistent fear regarding the fairness of the non-jury Special Criminal Court. One petition from Germany said that the Murrays were to be hanged for their political convictions and demanded that they receive a jury trial.[115] This linking of the government's treatment of its citizens with hypocrisy is apparent in other communications too, for example, one group writes: 'Is this the Ireland

[109] NAI Department of Foreign Affairs 2006/133/700 Letter from Mr and Mrs Benadom, Ann Arbour, Michigan, US, June 30 1976.
[110] NAI Department of An Taoiseach 2007/116/769. Letter from Klaus Stock, Internees Release Association, 18 January 1977.
[111] NAI Department of Foreign Affairs 2006/133/700. Letter from Judith Greenway, Department of Humanities, North East London Polytechnic, 26 June 1976.
[112] NAI Department of Foreign Affairs 2006/133/700. Letter from Sister M Canisius June, 24 1976.
[113] NAI Department of Foreign Affairs 2006/133/700. Letter from 'Worried Mother', undated.
[114] NAI Department of Foreign Affairs 2006/133/700. Letter from Mrs N Fitzpatrick, Templeogue, 13 June 1976.
[115] NAI Department of Foreign Affairs 2006/133/700. Letter from 'Undersigned Germans', 4 July 1976.

that the martyrs of the Easter Rising fought and died for? They too were condemned to death before a secret trial.'[116]

The extraordinary bulk of letters from beyond Ireland is unique to the Marie Murray case.[117] In a handful of letters of Irish provenance the writers stated that the only reason there was no widespread protest must be attributed to the general feeling in the country that no executions would take place.[118] However, Irish support for commutation was also evident. One letter from an Irish TD, Brendan Halligan, General Secretary of the Labour Party, reported that the party had passed a resolution supporting commutation of the death sentence against the Murrays.[119] Despite the disproportionate number of international letters compared to letters sent from within Ireland, the matter was clearly a hot topic of conversation. A letter received from a primary school student tells of her class debate on the issue:

> The verdict was that Capital Punishment should not be brought back into the country again…. Would you please have a public debate as I would like to see the Judges and yourself and other high people like that that would decide about Capital Punishment.[120]

Clemency in the case of Marie Murray was expressed by persons fundamentally opposed to the death penalty rather than opposed to its application in this particular case. It represented arguments for mercy in an era which was readily embracing abolition. Similarly, Seal noted that, post-1945, letters sent to the Home Office in capital cases moved from a profile in which the sender was frequently known to the condemned to a

---

[116] NAI Department of An Taoiseach 2006/133/702. Resolution received from General Defense Committee, US, undated.

[117] There were a number of letters, mostly from persons in Ireland or Northern Ireland, which expressed pro-death penalty views in the case of Marie Murray and Noel Murray. In two of these letters, the writers offered their services as hangman. These letters, advocating that sentence be carried out, often based this view on the status of the victim, a member of An Garda Síochána, reflecting the particular resonance this offence would have carried in Ireland, north and south of the border, during the 1970s. See NAI Department of Foreign Affairs 2006/133/700. Letter from Ralph Weymours, Germany, 19 June 1976; letter from WHK Cuthbert, Waterside, Londonderry, 10 June 1976; letter from Thomas P Moran, Dublin, 19 June 1976; letter from John Duncan, Co. Down, Northern Ireland, 10 June 1976.

[118] NAI Department of Foreign Affairs 2006/133/700. Letter from Mrs N Fitzpatrick, Templeogue, June 13 1976; Department of An Taoiseach 2006/133/701. Letter from Owen McGonagle, Donegal, 15 September 1976.

[119] NAI Department of An Taoiseach 2006/133/701. Letter from Brendan Halligan, TD, General Secretary of the Labour Party, 26 July 1976.

[120] NAI Department of An Taoiseach 2006/133/703. Letter from Miss Patricia Duff, St Vincent de Paul Girls National School, Marino, undated.

profile of persons unknown to the condemned, these later cases drew instead on 'imagined communities' to appeal for justice.[121] The themes identified by Seal are evident in the letters sent regarding the Murray case. Evidence of rationales for mercy grounded in more abstract principles was noted in the 1956 case of Mamie Cadden, for example John Kelly's plea that 'its continued existence is a disgrace to a civilised society', and noting European-wide developments, that 'it is only a matter of time until we ultimately follow the example of practically every civilised country in Europe.'[122] However, the tangible shift in the two decades which separated Cadden and Murray demonstrated a seeming tipping point away from individual-level motivations, such as Cadden's age and the unpremeditated nature of the killing, towards ones grounded in the nomenclature of human rights. The Murray case saw appeals move beyond individual-level factors to considerations of Ireland's place on the world stage, its human rights commitments, and a fledgling modern society. The letters on the Murray case were also informed by what had become known on the atrocities of World War II, and the political fall-out in Europe.

Despite this international outpouring of opposition in the Murray case, it represents an anomaly within the sample. There was no sustained anti-death penalty movement in Ireland. Irish feelings on capital punishment were marked by apathy and ambivalence, evident in the volume and nature of the letters received on each case. The volume of letters on file is small, a notable volume of correspondence on behalf of women numbered from five to 10 letters. O'Brien has written that the small number of death sentences hampered momentum of such a movement as interest dwindled between executions. O'Brien also noted that 'The gathering of people at the prison gates on the morning of an execution may have betokened interest or curiosity but not necessarily concern.'[123] The relatively low numbers of letters sent on behalf of the condemned women herein becomes clear when compared with the volume of letters on cases identified by Seal in England and Wales; 30 letters on file for a condemned person in the 1930s was substantial, and by the 1950s a substantial number of letters could number in the 100s.[124] There was no similar volume of correspondence in the majority of the files of the condemned women in the current cohort,

[121] Lizzie Seal (2014) 'Imagined Communities and the Death Penalty in Britain, 1930-1965', *British Journal of Criminology*, 54(5), 908-927.
[122] NAI Department of Justice 18/3562. Letter from John Kelly, Pembroke College Oxford, undated.
[123] Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson (ed) *Reflections on Law and History* (Four Courts Press 2006) at 232.
[124] Lizzie Seal (2014) 'Imagined Communities and the Death Penalty in Britain, 1930-1965', *British Journal of Criminology*, 54(5), 908-927.

with the marked exception of Marie (and Noel) Murray. However, it was the case that the volume of correspondence from the public increased throughout the sample period, signalling the controversial position capital punishment began to occupy in the latter half of the twentieth-century and the diachronic development of public opinion.

The Limits of Mercy: Annie Walsh (1925)

Any discussion of mercy must grapple with the 1925 execution of Annie Walsh.[125] Annie Walsh was convicted on 10 July 1925 for the murder of her husband Edward at their home in County Limerick. Michael Talbot was convicted separately for the same offence. Annie and Michael were both executed in Mountjoy Prison on 5 August.

Walsh could certainly have expected a reprieve; a woman had not been hanged in Ireland since the case of Mary Daly in 1903.[126] During Annie Walsh's confinement in Mountjoy Prison, a fellow inmate, Hannah O'Leary *was* in fact reprieved, while her brother Con O'Leary was executed.[127] The O'Leary case provided an example in which a man and a woman were convicted of the same crime and in which the woman received mercy above the man; indeed while Annie Walsh received a strong recommendation to mercy from the jury, Hannah O'Leary had only received a partial recommendation. Similarly, in the case of Annie Walsh (1929) *also* convicted of the murder of her husband with the aid of a man with whom she was in a relationship, although she received no jury recommendation, her sentence was commuted. In the 1929 Annie Walsh case, the Trial Judge had recommended that mercy be extended as the convictions rested on the evidence of children.[128]

This renders the earlier Annie Walsh case worthy of closer examination as a means of revealing how mercy operated. The great majority of executions carried out in the early 1920s had been linked to political violence; Gerard O'Brien has argued that it therefore seems incongruous that a woman would hang for a crime of passion although he posits that the widespread violence could have fomented a more punitive attitude towards violence generally.[129] The facts of the 1903 Mary Daly case bore some resemblance to those of

[125] NAI CCC Limerick 1925 1C-90-14; Department of Justice H1004/275.
[126] 'The Clonbrook Tragedy' *Leinster Express* (10 January 1903).
[127] 'There are five persons at present in Mountjoy Prison under sentence of death', in 'Five under Death Sentences' *Fermanagh Herald* (18 July 1925).
[128] NAI Department of Justice 234/2599. Letter from Justice O'Byrne, 30 July 1929.
[129] Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson (ed) *Reflections on Law and History* (Four Courts Press 2006).

Walsh, possibly creating a precedent for the Department of Justice which justified execution.

The influence of the Trial Judge is also evident in the case of Annie Walsh. O'Brien has proposed that the more conservative attitudes of the Victorian-era judiciary may have influenced Irish criminal trials throughout the 1920s.[130] The failure of the Trial Judge to endorse Annie Walsh's recommendation to mercy can be contrasted with the 1929 Annie Walsh case as an influential factor; the views of the Trial Judge were influential on decisions to reprieve.[131] The failure of the Trial Judge to endorse the jury recommendation was, as discussed above, a rarity. Without this endorsement, the view was that 'the Executive Council felt unable to give effect to [the jury] recommendation.'[132]

Irish public opinion did not appear to be clamouring for a reprieve in Walsh's case either. There was little public interest evident. This too was noted in press reporting:

> Little, if any, public interest was aroused in the execution which took place this morning. Beyond the presence of a few policemen and newspaper reporters outside the entrance to the prison, there was nothing else to indicate the grim scene which was about to be enacted within its walls. Shortly before eight o'clock a few women collected outside the avenue leading to the main entrance. The hour had scarcely struck when a warder emerged from the prison, and placed the usual notice on the gate.[133]

[130] ibid.

[131] Of 35 persons sentenced to death under the Cumann na Gaedheal Government between 1922 and 1932, the recommendations to mercy by the jury were ignored in 15 cases. In each of these 15 cases, the Trial Judge had disagreed with this recommendation. In the case of Patrick Boylan, both jury and Trial Judge recommended mercy, and when the government decided to let the sentence stand, the Judge again made further representations for his reprieve, to which the government assented. O'Brien writes that to depart from precedent in this manner, by disregarding the views of the Trial Judge, would have been a significant break. See, Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson (ed) *Reflections on Law and History* (Four Courts Press 2006).

[132] NAI Department of Justice 18/2737A. Memorandum on Jane O'Brien, 13 July 1932, circulated to Executive Council requesting decision on commutation of O'Brien.

[133] 'Co. Limerick Murder: Man and Woman Executed' *Irish Examiner* (6 August 1925). This excerpt from the press reporting touches on the femininity of crowds of spectators identified by Seal in the press reporting of executions in Britain in the twentieth-century; see also the increasingly rigid restrictions on how executions could be reported. See, Lizzie Seal, *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory* (Routledge 2014).

Another report noted that 'A small crowd congregated outside the prison.'[134] Annie Walsh, while in prison had received permission to correspond with and receive visits from various relatives,[135] but there were no letters of clemency from these persons. In fact, there were no letters appealing for clemency within the entirety of the extant archives on Annie Walsh.[136] The execution of Annie Walsh was therefore signally different from high-profile cases of women executed in Britain in the twentieth-century; unlike the cases of Edith Thompson or Ruth Ellis, Annie Walsh's execution aroused no feelings of outrage or disgust. Her execution passed mostly unremarked and without fanfare.[137]

The lack of interest may have derived from a genuine expectation that Annie Walsh would be reprieved. It was reported, and indeed it seems evident from the newspaper reports also, that the general expectation was that Annie Walsh would be reprieved.[138] It is evident from press reporting that newspapers were 'hedging their bets', in case a late-hour reprieve was granted, 'For the first time in 20 years in Ireland a woman is to be hanged this morning. Up to midnight last night there was no variation of the death sentence'.[139]

It was only on 6 August that reporting could give voice to these expectations, with the sub-heading 'Had Hoped for Reprieve',[140] which perhaps also links to the fact that everyone else had expected a reprieve as well. One account read, 'It was learned that both met their ends resignedly and that they were most attentive to the ministrations of the priests. The

[134] 'Double Execution' *Irish Independent* (6 August 1925).
[135] NAI Department of Justice H1004/275.
[136] However, as previously outlined, letters may have been destroyed or lost, and only those extant documents in the archives could be examined.
[137] For an account of how the executions of Thompson in 1923, and Ellis in 1955, influenced public debate on capital punishment see, Lizzie Seal (2011) 'Ruth Ellis and the Public Contestation of the Death Penalty', *Howard Journal of Criminal Justice*, 50(5), 492-504; Lizzie Seal, *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory* (Routledge 2014).
[138] Newspaper reporting on murder trials throughout the 1920s was more substantial in cases of women who had murdered adults than for women tried for the murder of infants. Within the sample, the cases of Hannah Flynn, Mary Moynihan, Hannah O'Leary, Annie Walsh (1925) and Annie Walsh (1929) demonstrated greater newsworthiness than the other capitally convicted women of the 1920s who were condemned to death for infanticide. In addition to skewing by victim identity, cases occurring later in the sample also attracted more column inches. However, the case of Annie Walsh (1925), despite her anomalous fate, did not attract notably greater levels of press interest. Considering Walsh's status as the only woman executed post-Independence, more reports on her executions and case would be expected, however this was not found. It is argued that the general expectation that she would be reprieved contributed to this. Further, substantial levels of apathy, possibly resulting from the emergence of years of violence, compounded this silence.
[139] 'Irish Woman to be Hanged To-day' *Irish Independent* (5 August 1925).
[140] 'Double Execution' *Irish Independent* (6 August 1925).

woman had been hoping for a reprieve to the last.'[141] Another report included this detail also:

> The female prisoner was hoping to the last that her sentence would be commuted. She was very nervous and walked with faltering steps to the scaffold, praying all the while. Father MacMahon the prison chaplain, was in attendance.[142]

It is suggested that Annie Walsh was denied reprieve due to a number of factors including the Trial Judge's failure to endorse the jury recommendation, the nature of the crime she had committed, her sexual relationship with the co-convicted and, crucially, her role in the commission of the offence relative to that of the male participant and her characterisation as the dominant partner.[143] The killing of a husband by his wife and her lover is an offence of cultural significance. The murder of a husband by his wife was historically considered a disruption of a natural hierarchy and therefore was treated with greater severity than other killings. This differentiation was once referred to as a form of *petit treason*; Anette Ballinger noted that 'Women who kill their husbands/partners have always been punished more harshly than men who kill their spouses.'[144] Compounding this, Annie Walsh and Michael Talbot had been engaged in an extramarital affair prior to the killing. In his evidence, Michael Talbot claimed that Annie Walsh had played the more active role in her husband's murder. Annie Walsh's own evidence could not refute these claims as her version of events was rendered illegitimate due to her claims that her husband had been shot, when in fact he had died from blows to the head. This deliberate and obvious lie downgraded the account of the killing proposed by Walsh. Talbot's allegations therefore, that Walsh was the dominant partner, who had enlisted his assistance in her scheme to murder her husband for financial gain, was the accepted narrative. The government could not have spared Walsh and hanged Talbot.

A comparison of the cases of Annie Walsh and Michael Talbot to Hannah and Con O'Leary elucidates this difficulty of reprieving only Walsh.[145] Both Annie Walsh and

[141] 'Double Execution' *Irish Independent* (6 August 1925).
[142] 'Co. Limerick Murder: Man and Woman Executed' *Irish Examiner* (6 August 1925).
[143] For a more detailed discussion of the depiction of Walsh as dominant, see Chapter Nine.
[144] Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000) at 204.
[145] For a fuller discussion of the case of Hannah O'Leary see Chapter Nine.

Hannah O'Leary were in the condemned cells during the summer of 1925. Their cases offer a comparison of reverse symmetry; in one the dominant partner was female and in the other the dominant partner was male. The less culpable female, Hannah O'Leary, had sentence commuted, while the less culpable male, Michael Talbot, was executed along with the dominant female. Annie Walsh *could not* be reprieved because there was a male partner who was complicit. If they were unwilling to commute the sentence of Talbot, it would have been too much to commute the sentence of Walsh. While Annie Walsh was not executed because of her gender, it could be argued that she was denied commutation due to the gender of her co-convicted.

Later attempts to rationalise the execution of Annie Walsh underline the legacy of her death. This was pronounced in the case of Jane O'Brien, as already mentioned a somewhat unsympathetic case in which Jane had shot dead her nephew John Cousins. The crime was considered particularly callous and this presented the very real fear that Jane O'Brien would be denied reprieve. In light of this, petitioners felt the need to distinguish her case from that of the only other woman executed in post-Independence Ireland. The arguments rely heavily on the notion that Annie Walsh was executed because she was the dominant woman, acting in concert with a male partner:

> In the case of Mrs Walsh, it was a murder committed under brutal circumstances in which the woman took the leading part, and in which her paramour over whom she had control was also sentenced to death, and her reprieve would have meant the reprieve of the man in the case.[146]

A letter from Jane O'Brien's solicitor reinforced this point:

> We understand that the last woman hanged was Mrs Walsh. We enquired from Mr Brereton-Barry (who defended her) as to the circumstances of that case and it appears to us that she was convicted of a particularly brutal murder – one of savage brutality. We think it would have been very difficult to have reprieved her and hanged her lover, so we presume that the Executive Council at that time felt they could not let one off and hang the other. They were both hanged.

[146] NAI Department of Justice 18/2737A. Petition on behalf of Jane O'Brien.

> Mrs Walsh was the only woman to be hanged since the establishment of the Irish Free State.[147]

The decision not to commute the sentence of Annie Walsh may be considered a 'hard decision', made within a set of very particular factors. However, it should be noted that there is little within the archives which could shed light on this decision. This dearth of documentation may be because a decision of this nature, not to reprieve, was essentially a 'non-decision', and required no formal documentation beyond the machinery of death which followed on from the death sentence.

Mercy by Gender

David M Doyle and Ian O'Donnell have argued that the differential application of mercy according to gender is one of the defining characteristics of capital punishment in Ireland; half of all men who were capitally convicted were executed but only one in ten women who were capitally convicted for the murder of an adult was executed.[148]

The research herein supports the position that mercy was extended disproportionately to women, and argues that women were reprieved *qua* women. The case of Annie Walsh (1925) and the subsequent need to justify the decision to execute Walsh, is evidence of a default position of clemency for women. This is evident elsewhere in the archives also, such as in the following rationale for commutation proposed by the Department of Justice on the case of Elizabeth Hannon, 'The fact that the condemned person is a woman is a very relevant consideration. Women are executed in very exceptional circumstances only.'[149]

In the case of Mary Somerville, convicted of murdering her daughter's newborn infant, the Trial Judge outlined in his confidential notes the heinous and callous nature of the crime, before concluding, 'On the other hand, the accused is a woman and, however illogical it may be, this is a matter which cannot be overlooked.'[150]

The extension of mercy to women due to their sex was established practice. This official viewpoint was generally reinforced by the letters from members of the public. One letter

[147] NAI Department of Justice 18/2737A. Letter from MJ O'Connor and Company Solicitors, Wexford, 13 July 1932.
[148] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independent Ireland', *Journal of Legal History*, 33(1), 65-91.
[149] NAI Department of Justice 234/2016. Memorandum, 15 December 1927.
[150] NAI Department of Justice 18/3110A. Letter from Justice O'Byrne, 10 December 1938.

writer on the case of Elizabeth and Rose Edwards wrote that, while logically it was no worse to hang a woman than a man, 'most people will agree that there is something peculiarly revolting in the idea of men deliberately and officially killing a woman.'[151] In cases, such as that of Annie Walsh (1929) which were less obviously sympathetic, such inclinations were evident also, one letter writer argued:

> It would be, in my deliberate & earnest opinion, a shocking thing to hang a woman. Things have been bad enough in this land of ours and I trust, that the papers of the world will not be able to blazen forth that in this year of 1929, a woman has been hanged in Ireland.[152]

Later cases too exhibited a tendency for letter writers to cite gender in mitigation of the offence, evident in the 1946 case of Agnes McAdam for whom commutation was viewed as appropriate 'particularly in view of the fact that the unfortunate prisoner is a woman'.[153] The evidence of these discourses of mercy from official quarters was also evident in the letter of one Senator who wrote that he respectfully submitted that 'a woman should not be hanged',[154] or from a TD who wrote that 'as she is a woman I trust the sentence of death will not be carried out.'[155]

Even in the 1956 case of Mamie Cadden, rationales were still being proposed grounded in gender, for example the comments received from the constitutional scholar John Kelly who urged commutation to avoid 'the shame and horror of bringing a human being – and a woman – to a barbarous death.'[156] In this conception of humanity, male is default while female is something other. Mamie Cadden *is* a 'human being', but she exists within another category, that of woman, which suggests that a male condemned would not receive such additional classification according to gender.

In the 1976 case of Marie Murray, there was evidence of the emerging 'equality-based' argument which refuted differential justice because of gender. One letter writer noted the

[151] 'Letters to the Editor: The Edwards Case' *Irish Times* (18 May 1935).
[152] NAI Department of Justice 234/2599. Letter from James O'Donnell, Donegal, 29 July 1929.
[153] NAI Department of Justice 18/9074A. Letter from Assistant County Surveyor's Office, Ballybay, 8 April 1946.
[154] NAI Department of Justice 18/9074A. Letter from Senator Seamus Johnston, 8 April 1946.
[155] NAI Department of Justice 18/9074A. Letter from Mrs BM Rice, TD, 8 April 1946.
[156] NAI Department of Justice 18/3562. Letter from John Kelly, Pembroke College Oxford, undated.

absurdity of commutation based on gender in a case in which the woman had played the more active part:

> It has been said that it would be undesirable to execute a woman. This is nonsense. It would, in fact, constitute the height of discriminatory injustice to hang the man and spare the woman. To do so would not only be absolutely scandalous but would definitely provoke a reaction, and not all muted, in the country. They must both hang, or neither. Further, in this case, if there are any differences it should be in favour of the man – the woman is the older, the more involved in subversion and the one who did the actual killing. Again if the woman were to be spared, qua a woman, it would become standard practice for armed robbers to have a woman with them to do the murdering.[157]

This reasoning bears some similarities with the facts of the Annie Walsh (1925) case which prevented the extension of mercy to the woman, again because of her dominant role in the offence. Considerations of mercy based explicitly on gender in the Marie Murray case would have been contrary to the notion of gender-blind justice. As Marie Murray had been understood as the active agent in the killing, differentiation of her as submissive could not be facilitated by the facts. As one British newspaper stated, a reprieve for Marie Murray was viewed as 'highly unlikely' as she had fired the shot.[158] Discrimination in favour of Marie Murray *qua* woman would have been unthinkable. However, for a great many women in the cohort of 25, decisions of mercy were based solely on their gender. The extension of mercy by gender emerged as the defining feature of the female experience of capital punishment in post-Independence Ireland.

Conclusion

Twenty-one women sentenced to death in Ireland post-1922 benefited from the application of mercy, through the commutation of their sentence to one of penal servitude for life. Mercy was therefore a significant feature of the research herein and a defining characteristic of the experience of women sentenced to death in Ireland.

[157] NAI Department of Foreign Affairs 2006/133/700 Letter from Reverend Grattan Bannister, Cork, 6 July 1976.
[158] Derek Brown 'Couple Unlikely to Hang' *Guardian* (11 June 1976).

Mercy could be recommended at various stages post-conviction; these recommendations came from many quarters and the processes by which mercy was extended or denied were both formal and informal. Recommendations to mercy could be expressed by the jury following a guilty verdict. Such recommendations were given in the majority of cases herein. Similarly, Trial Judges could endorse the jury's opinion, and chose to do so in a majority of cases also. Throughout the trial, Trial Judges reinforced the construction of the defendant as possessing full agency; however, post-conviction, almost immediately in the case of the jury recommendations, the processes by which agency was stripped from women were evident.

Regarding those cases in which either no jury or Trial Judge recommendations were forthcoming, a number of factors were instrumental. The actual 'risk' facing condemned women was crucial. Thus, in cases, like those of infanticide, in which there was no reasonable expectation that the condemned would face execution there was less need to express elaborate pleas for mercy. The historical context and a diachronic understanding of capital punishment post-1922 is also relevant; capital cases occurring later in the sample occurred in an era of increasing unease about capital punishment and a corresponding fall-off in the use of the penalty. Further, the nature of the murder substantially dictated the discourse, framing the perpetrator as deserving of either punishment or mercy.

Following the trial, the Department of Justice prepared memoranda on capital cases. The practice of compiling these memoranda allowed the Trial Judge to express his views at greater length in private correspondence to the Minister for Justice. This constituted one aspect of the informal processes through which mercy was considered. In addition to this, Garda Reports were also sought and received by the Department. These Reports offered often 'gossipy' information on the condemned women and their backgrounds, and provided a snapshot of local rumours. Throughout the sample, Garda Reports often expressed particularly punitive judgements on the women.

In mitigation, petitions were often sent by the solicitor of the condemned women. There was a significant degree of disparity between the cases in this respect. While correspondence from the condemned women's solicitors was standard, some women received considerable support in the form of organised petitions, although this happened in a minority of cases only.

The rationales for mercy were formulaic. They related to gender, age, circumstances, low mentality, motherhood, religion, or the pernicious influence of men. There were very few appeals for leniency which were premised on a more general opposition to capital punishment. Rather, arguments for reprieve were based on the individual characteristics of the women, or the crime.

The exceptions to this were the cases of Mamie Cadden, and more particularly, Marie Murray. This development is reflective of a changing context; rationales for mercy located at more abstract levels, such as principled opposition to capital punishment, became particularly marked during the campaign for leniency for Marie Murray in 1976.

Although the extension of mercy, through the formal commutation of sentence of death to one of penal servitude for life, was a defining feature of the research herein, the case of Annie Walsh (1925), the only woman to be executed post-1922, exposed the limits of mercy. It is argued herein that the anomalous fate of Annie Walsh rested on a number of interconnecting factors, such as the particulars of the crime, the fact of a male co-accused, and the gender dynamic this introduced. Walsh's execution meant that petitioners in later cases sought to actively distinguish their situation from hers. This effect was notable in those cases, such as that of Jane O'Brien, which carried a perceived greater likelihood that sentence of death would be carried out. These later cases therefore further framed the narrative of Annie Walsh (1925) as that of a dominant older woman, masterminding the brutal murder of her husband, with the assistance of a younger, less culpable man whom she had seduced.

The case also presented an unusual example of press reporting. There was little press commentary on Walsh's case. This is somewhat paradoxical as her crime was atypical, and as her execution loomed, substantial press accounts could have been expected. However, it is argued that this was the result of a persistent belief that Walsh would be reprieved at the final hour. This was evident even in the newspaper reports, which announced that the execution would take place even as they waited for commutation with baited breath.

Finally, the chapter has attempted to demonstrate that for much of the period post-1922, gender operated as a specific rationale for mercy. The women within the sample were often recommended to mercy explicitly because they were women. It was the unofficial but occasionally stated policy that it was inappropriate to execute women. The application of

mercy according to gender was at work throughout. This is noticeable in the subsequent attempts to rationalise the execution of Annie Walsh, which provided an example of a 'hard case' in which a combination of specific factors constructed her as beyond the scope of reprieve.

However, the extension of mercy to women *qua* women carried a paternalism that undermined the agency of women. The status of women as a category of persons deserving of mercy by default, often regardless of the offence, was premised on a view of women as essentially frail, vulnerable, weak and inferior. This mercy was therefore a troubling 'gift'. Capital punishment was viewed as inappropriate for women; as was imprisonment. The following chapter explores this further and argues that the mercy shown to many women was an element of a more broadly paternalistic approach which saw women punished differently and sometimes more harshly than men.

Chapter Seven

Confinement

Introduction

The extension of mercy, through the commutation of a death sentence to penal servitude for life, characterised the main outcome for women sentenced to death post-Independence. However, the application of mercy can also be understood as a function of paternalism. As outlined in the previous chapters, rationales for mercy were often grounded explicitly in the gender of the condemned women or were situated at the individual-level, particularly in the case of women convicted of infanticide. Paternalism coloured discussions of women and capital punishment, and gender itself often provided sufficient mitigation to secure a reprieve.

However, paternalistic discourses on women dominated post-reprieve as well. Twenty-one women had their sentence of death commuted to penal servitude for life. This chapter explores the confinement of these 21 reprieved women, through investigation of their time in prison, and particularly explores how paternalism was expressed through the transfer of women from prison to religious-run institutions. The chapter argues that the discretionary nature of women's detention in semi-penal sites often led to lengthier periods of coercive confinement. The chapter examines the lengths of time reprieved women spent in prison, and notes the difference between sentence lengths for those convicted of killing adults and those convicted of infanticide; this disparity dispels to some extent the idea that women spent much shorter periods of time detained than men. The chapter also explores petitions written by the reprieved women from prison seeking further commutation of sentence and the discourses employed to justify release.

Evident throughout the archival material is a belief that prison was an inappropriate environment for women; efforts were frequently made to have female prisoners removed to sites of semi-penal confinement. This led to falling rates of imprisonment for women throughout much of the post-Independence period and the closure of women's prisons.[1] The imprisonment rate for women, expressed per 100,000 of population, was 6.8 in 1926,

[1] Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011).

3 in 1951 and 1.6 in 1971. The daily average number of female prisoners fell from 100 in 1926, to 43 in 1951 and just 23 in 1971.[2]

The chapter then turns to examine the outcome of this drive to remove women from the prison setting and investigates the transfer of women to religious-run institutions. The chapter explores how 11 of the 21 reprieved women were coercively confined within these religious-run institutions, to which they were conditionally discharged from prison. Processes of infantilisation and condemnation based on the perceived immorality of women are evident in the confinement of women in these sites.

The existing research has demonstrated that sites of semi-penal coercive confinement were hugely important in an Irish context, especially in the post-Independence period.[3] In 1951, a staggering 1 per cent of the Irish population was coercively confined.[4] Mary Raftery and Eoin O'Sullivan have noted that the Irish solution to State assistance and welfare provision was institutional, in many cases in partnership with religious orders and congregations; such a system afforded a cost efficient means of providing the most basic care, while affording the Catholic Church a central position within Irish society.[5] A network of various types of institutions existed, as outlined in Chapter Three, each catering to a specific cohort of persons. The past two decades have seen a period of uncovering related to this network of semi-penal sites, and the exposure of practices of cruelty, abuse and deprivation within. This has occasioned a number of reports which have sought, each within its narrowly defined parameters, to investigate particular facets of particular institutions. In this regard, the McAleese Report is particularly relevant to the 21 reprieved women within the

[2] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).
[3] Maria Luddy, *Women and Philanthropy in Nineteenth-Century Ireland* (Cambridge University Press 1995); Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999); Maria Luddy (2001) 'Moral Rescue and Unmarried Mothers in Ireland in the 1920s', *Women's Studies*, 30(6), 797-817; James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008); Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012); Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013); Damien Brennan, *Irish Insanity, 1800-2000* (Routledge 2014).
[4] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).
[5] Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999).

sample.[6] This will be explored further following discussion of the imprisonment of reprieved women.

Prison

David M Doyle and Ian O'Donnell cite the length of time reprieved women spent in prison in order to demonstrate the significant disparity in sentence length served by reprieved women. They further state that women who were reprieved served a median time in prison of three and a half years, which they contrast with the figure of seven and a half years for reprieved men.[7] Tables 7.1 and 7.2 below present the time served in prison for reprieved women according to whether the victim was an adult or an infant.[8]

Name	**Time Spent in Prison**
Hannah Flynn	18 years 7 months 26 days
Mary Moynihan	5 years 7 months 6 days
Hannah O'Leary	17 years 2 months 19 days
Annie Walsh (1929)	6 years 7 months 5 days
Jane O'Brien	9 years 1 month 14 days
Agnes McAdam	3 years 7 months 16 days
Mary Agnes Bernadette Daly	4 years 6 months 25 days
Frances Cox	7 years 4 months 1 day
Mamie Cadden	1 year 9 months 6 days[9]

Table 7.1: Time Spent in Prison by Women Convicted of the Murder of an Adult

Comparing the periods of time spent in prison by women convicted of the murder of an adult, with those women capitally convicted for infanticide, it emerges that reprieved women who had committed infanticide spent much shorter periods of time in prison. Table 7.2 demonstrates that while one woman spent almost five and a half years in Mountjoy Prison,[10] most spent considerably less; the 'working rule' for infanticide cases suggested a

[6] Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013).
[7] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independent Ireland', *Journal of Legal History*, 33(1), 65-91.
[8] The lengths of time refer to period of time spent in prison following conviction, and do not account for time spent on remand, as these were inexact and not recorded in all cases.
[9] Mamie Cadden was transferred to the Central Criminal Lunatic Asylum on 7 August 1958 and died there 20 April 1959.
[10] Kate Owens was convicted of infanticide on 22 November 1943 and was released from Mountjoy Prison on 2 May 1949 to a paid situation at a religious institution. Kate was a 'persistent offender' and had previously been convicted of concealment of birth. Her lengthier period of imprisonment reflects this. The following chapter further explores the rationales of pathology which justified her longer confinement in prison.

period of imprisonment of two years.[11] Once women convicted of infanticide are removed, the contrast between imprisonment periods experienced by men and women commuted to penal servitude for life becomes less marked. The periods of time spent in prison for women convicted of killing an adult were more substantial than the median figure of three and a half years for *all* reprieved women.[12]

Name	**Time Spent in Prison**
Elizabeth Doran	51 days[13]
Elizabeth Hannon	2 years, 7 months, 5 days
Mary Kiernan	6 months, 3 days
Mary Anne Keane	1 year, 4 months, 26 days
Deborah Sullivan	4 months, 21 days
Catherine Aherne	3 years, 11 months, 28 days
Christina Russell	3 years, 3 months, 21 days
Margaret Finn	2 years, 7 months, 1 day
Elizabeth Edwards	2 years, 5 months, 10 days
Rose Edwards	1 year, 8 months, 4 days
Mary Somerville	2 years, 1 month, 9 days
Kate Owens	5 years, 5 months, 11 days

Table 7.2: Time Spent in Prison by Women Convicted of Infanticide

It was noted by the Department of Justice, commenting on Hannah Flynn's lengthy imprisonment, that there was 'no record of any cases since 1879 of women serving such a long time, the longest range from 7 to 14 years.'[14] However, while Flynn's case was unusual, it was obviously not entirely isolated, evident in the very similar length of time served by Hannah O'Leary, and in the upper figure of 14 cited by the Department of Justice.

The periods of time spent in prison by women who killed an adult ranged from less than two years, in the case of Mamie Cadden, to over 18 and a half years, for Hannah Flynn. Both of these figures are misleading however; Cadden had been transferred to the Central Criminal Lunatic Asylum in 1958 where she died the following year. Hannah Flynn was

[11] Reference to the 'working rule' made in the files: NAI Department of Justice 234/2016; Department of Justice 234/2603; Department of Justice 234/3332.
[12] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independent Ireland', *Journal of Legal History*, 33(1), 65-91.
[13] Elizabeth Doran was certified as insane and transferred to the Central Criminal Lunatic Asylum in Dundrum 51 days after conviction, she spent a further four a half years in the Asylum.
[14] NAI Department of Justice 18/2769A. Note from Mountjoy Prison, 6 November 1936.

conditionally discharged from Mountjoy Prison to a religious-run institution where she remained for approximately three decades.

The periods of time spent in prison by women convicted of killing an infant were shorter than the imprisonment lengths for those who killed adults. However, just as the imprisonment lengths for women convicted of the murder of an adult are misleading, the sample of infanticide cases also provides a misleading figure. Although Elizabeth Doran spent 51 days in Mountjoy Prison, she was certified as insane post-conviction and transferred to the Central Criminal Lunatic Asylum at Dundrum on 24 July 1926. In total she spent 4 years and 11 months in some form of confinement. Of the remaining 11 women, six were conditionally discharged to religious-run institutions: Elizabeth Hannon, Mary Anne Keane, Deborah Sullivan, Margaret Finn, Elizabeth Edwards and Mary Somerville, while Kate Owens was discharged from prison to a paid situation at another religious-run institution.

Shorter periods of imprisonment for infanticide cases were provided for officially; a Department of Justice memorandum specified that persons serving a sentence of penal servitude for life should not be considered for release until they had served the equivalent of 20 years, but this included an exception for women convicted of infanticide.[15] This demonstrates the provisions in place to temper the severity of the law with regard to infanticide, similar to the government policy regarding commutation outlined in Chapter Five. However, despite the 'working rule', there was no certainty on how long such women should spend in prison. This was demonstrated by the Secretary at the Department of Justice who noted, in the case of Christina Russell, that due to the age of the infant at death she 'should suffer five full years imprisonment before we consider releasing her either wholly or to a Home.'[16] The discretionary and informal decision-making with regard to imprisonment facilitated the significant disparity of imprisonment length within the sample.

While 21 women had their death sentence commuted to penal servitude for life, Annie Walsh (1929) was the only reprieved woman whose sentence was formally commuted further; on 12 August 1932 her sentence was reduced to 10 years penal servitude.[17] The

[15] NAI Department of Justice 18/2769A. Note from Mountjoy Prison, 6 November 1936.
[16] NAI Department of Justice 234/3332. Letter from Stephen Roche, 17 November 1933.
[17] NAI Department of Justice 234/2599.

informal process of further commutation availed of in all other cases within the sample, through decisions to release women either to their family or to religious-run institutions, was not the preferred option for Walsh or her co-convicted Martin Joyce. The distinction in the case of Annie Walsh (1929) may have reflected a more general, or 'masculine', means of extending commutation due to the presence of the male co-convicted in this case and, arguably, because the process of informal commutation was viewed as more suited to cases of women sentenced to death.

Petitioning of Reprieved Women

Just as rationales for mercy operated to secure a reprieve from the death sentence, processes of mercy continued post-commutation as women began to petition for further relief from their sentence of penal servitude for life. An analysis of the rationales presented in the reprieved women's petitions suggested a number of prevailing features, such as considerations related to the women's family, health, and promises to lead a good life.

Many of the women petitioned that they were needed by their family and cited their family's desire to have them return home; this feature of petitions demonstrated the caring roles performed by many of the women and their place in the family home. Mary Moynihan stated that she was needed by her father who was 'very sad and lonely and heart-broken over my trouble.'[18] Mary Kiernan also said she was needed by her mother at home, 'My mother is widow [sic] and I am all the girl she has, and she is in a terrible way about me.' Christina Russell, who was released unconditionally to her family, took up the care of her invalid mother on release.[19] Margaret Finn's mother also petitioned that she needed her daughter:

> I am a poor lone widow living alone in the side of the road. It would be a great comfort and charity for me if your gracious self was pleased to releace [sic] this my daughter for I am alone and destitute and saddly [sic] needs her help.[20]

The failing health of the women was also cited as a reason for release; Hannah Flynn petitioned that 'I feel my health breaking with the long years of imprisonment and the

[18] NAI Department of Justice 234/1744. Petition of Mary Moynihan, 19 July 1928.
[19] NAI Department of Justice 234/3332. Petition of Mary Kiernan, 31 January 1927.
[20] NAI Department of Justice 234/3118A. Letter from Kate Finn, 12 July 1933.

weary longing to see my people again.'[21] The effect of imprisonment on mental health was also cited by some, such as Mary Moynihan who stated that 'imprisonment seems to be depressing me of late.'[22] Hannah O'Leary too cited the 'strain' of imprisonment.[23] Jane O'Brien petitioned that as she was 'advancing in years' she wished to be released that she might 'be allowed an opportunity of finding a way of living, and of making a fresh start in life.'[24] She also mentioned, in common with Hannah O'Leary, the 'strain' of prison life, and declared her willingness to enter a convent 'for a period' if this was the wish of the Department. Mary Somerville, aged 55 when she petitioned to be released from prison, also cited her advancing age as an aggravating feature of imprisonment, stating that she was 'failing in health of body and mind'.[25]

Separation from family members was often tinged with the poignancy of bereavement as family members passed away as the women served their sentences.[26] Hannah Flynn's parents died while she was in prison, but the Governor of Mountjoy Prison stated that her siblings had not told Hannah as they were 'afraid to tell her the truth.'[27] Mary Moynihan also suffered the loss of her mother while she was in prison. In such cases it was evident that some women harboured feelings of guilt, as Moynihan expressed, 'Since my conviction my poor Mother has died no doubt of a broken heart'.[28] Kate Owens petitioned, citing her mother's poor health, eager 'to see and speak to her before she dies.'[29]

> The greatest punishment I have endured since I was sentenced is the thought of all the worry and bitterness I have caused my mother in her old age. I beg you to give me a chance of making up to her during the remainder of her life, for all the wrong I have done on her.[30]

Catherine Aherne also expressed guilt regarding her husband's emigration to Australia following her 'disgrace'. Catherine expressed her obligation to travel to Australia to be

[21] NAI Department of Justice 18/2769A. Petition of Hannah Flynn, 5 July 1931.
[22] NAI Department of Justice 234/1744. Petition of Mary Moynihan, 28 June 1930.
[23] NAI Department of Justice 18/2770A. Petition of Hannah O'Leary, 14 March 1934.
[24] NAI Department of Justice 18/2737A. Petition of Jane O'Brien, 8 July 1941.
[25] NAI Department of Justice 18/3110A. Petition of Mary Somerville, 14 December 1940.
[26] Visiting Regulations allowed varying number and lengths of visits according to sentence type and how long had been served of the sentence.
[27] NAI Department of Justice 18/2769A. Note from Mountjoy Prison, 14 May 1942.
[28] NAI Department of Justice 234/1744. Petition of Mary Moynihan, 22 January 1930.
[29] NAI Department of Justice 18/6678A. Petition of Kate Owens, 22 May 1947.
[30] NAI Department of Justice 18/6678A. Petition of Kate Owens, 16 December 1946.

with her husband, claiming that 'it is more for his sake than my own that I ask to be allowed to go to him', as she feared he would lapse into alcoholism without her.[31]

Women did not universally express regret and sorrow for the offences for which they were convicted. Petitions often related to the hardship of imprisonment, such as Mary Moynihan's statement: 'I feel terribly depressed when I think of the miserable life before me'.[32] Moynihan also continued to implicate Jeremiah Horgan in the murder, the husband of the victim, 'I was only 19 years of age at the time and was not altogether to blame.'[33] Moynihan relies on her age and immaturity in a number of her petitions, claiming that she was 'born and reared in the heart of the country and was entirely ignorant of the law.'[34] Moynihan was not the only woman who laid the blame elsewhere, Mary Anne Keane petitioned that:

> I have suffered enough with a bad husband for this past eight years. I would not go back to live with him and I would have no place else to turn to. I feel my health much depressed by the imprisonment.[35]

Many petitions included promises to lead a better life, such as Margaret Finn's apology and pledge for the future, 'I am very sorry for the offence for which I was charged and I promise if I am given this one chance I shall turn over a new leaf and live a better life for the future.'[36] Mary Moynihan too claimed, 'I faithfully promise never never more to offend,'[37] while Kate Owens said that prison had 'taught her a good lesson.'[38] Catherine Aherne too gave such an undertaking, 'I promise I will never get myself into trouble again.'[39] Elizabeth Hannon in her petition expressed her regret but also situated her actions beyond culpability by pathologising the killing:

---

[31] Just as the Department of Justice granted Catherine permission to leave prison to join her husband in Australia, contact with Laurence Aherne was broken. It was later reported that he had been admitted to hospital suffering from alcohol-related ill-health. NAI Department of Justice 234/2603.
[32] NAI Department of Justice 234/1744. Petition of Mary Moynihan, 22 January 1930.
[33] NAI Department of Justice 234/1744. Petition of Mary Moynihan, 19 July 1928.
[34] NAI Department of Justice 234/1744. Petition of Mary Moynihan, 4 November 1927.
[35] NAI Department of Justice 18/3540. Petition of Mary Anne Keane, 19 September 1930.
[36] NAI Department of Justice 234/3118A. Petition of Margaret Finn, 28 September 1931.
[37] NAI Department of Justice 234/1744. Petition of Mary Moynihan, 19 July 1928.
[38] NAI Department of Justice 18/6678A. Petition of Kate Owens, 26 May 1948.
[39] NAI Department of Justice 234/2603. Petition of Catherine Aherne, 4 May 1933.

> I don't know why I was tempted to commit this awful crime but I could not be in my right mind, on giving birth to the child to do such a thing and ever since I am terribly worried about it and I can't rest with the pain of my mind.[40]

This demonstrates that where women accepted responsibility for their actions and offered apologies, this was often qualified in some way. The personal petitions of reprieved women, which are present in the majority of cases, offer a glimpse of the voices of the women themselves. They provide insight into how women viewed their conviction and imprisonment. However, as discussed earlier, the framing of the petitions as revealing the women's voices presents issues of agency and authenticity.[41] For example, in Lindsey Earner-Byrne's microhistory of the case of Mary M.,[42] she noted that a first-hand account of rape was extraordinarily rare. Earner-Byrne concurs with Clíona Rattigan that we rarely hear the voices of women on issues of sexuality.[43] However, Earner-Byrne also noted that within her microhistory, Mary M. 'presented a version of herself' that was 'morally unquestionable'.[44]

The narratives evident in the petitions share common themes, such as the attempts to reduce culpability, or alternatively the promise of rehabilitation. The content of petitions was therefore mediated by their specific purpose, the intended audience and the position of the authors. For example, petitions were likely influenced by the ministrations of prison chaplains, and the advice of Governors and religious visitors. This brings home that discourse is situated and action-oriented.[45] Petitions cannot therefore be read as true 'bottom-up' accounts. Notwithstanding these concerns however, there is also evidence of individuality within the petitions, for example in the obvious anger of some, such as Mary Moynihan and Mary Anne Keane, towards the men they blamed for their situations. The

[40] NAI Department of Justice 234/2016. Petition of Elizabeth Hannon, 11 February 1930.
[41] See 'Methodology', discussion in 'Materials Used'.
[42] Mary M. petitioned the Archbishop of Dublin, Edward J Byrne, in 1924 for financial assistance to cover the boarding-out costs of her son. Mary revealed in her letter that she had become pregnant as a result of rape, perpetrated by men who came to raid the house she lived in with her elderly aunt and uncle during the Civil War. See, Lindsey Earner-Byrne (2015) 'The Rape of Mary M.: A Microhistory of Sexual Violence and Moral Redemption in 1920s Ireland', *Journal of the History of Sexuality*, 24(1), 75-98.
[43] Rattigan wrote that the voices of the women prosecuted for infanticide offences in Ireland are missing because they left no records of their own, see Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).
[44] Lindsey Earner-Byrne (2015) 'The Rape of Mary M.: A Microhistory of Sexual Violence and Moral Redemption in 1920s Ireland', *Journal of the History of Sexuality*, 24(1), 75-98, at 79.
[45] Anne Worrall, 'Discourse Analysis', in Eugene McLaughlin and John Muncie, eds, *The Sage Handbook of Criminology* (Sage 2005).

opportunity for petitions to be fully exploited is also evident in the carefully worded and considered petition of Mary Somerville; Somerville was a rarity within the sample as a woman who demonstrated greater agency and capacity to resist coercion. Somerville's petition provided an almost-too-perfectly realised depiction of a woman who had repented of her wrongdoing, 'I have shown to my spiritual director my true sorrow and penitence for my crime.'[46]

There is little, at first glance, to distinguish between those women unconditionally released from prison to their families and those conditionally discharged to religious-run institutions. However, the circumstances of the woman's family appear to have been influential. Mary Kiernan served only six months in prison and was released unconditionally. There was evident favour for Kiernan's early release, demonstrated in the correspondence from the Department to the Governor of Mountjoy Prison, 'You will please suggest, in a discreet fashion… that she should petition for a further mitigation of sentence.'[47] The rationales outlined in Kiernan's petition provide no material of huge distinction from many other petitions which were unsuccessful; however, the construction of Mary Kiernan as 'respectable' may have provided motivation in her favour. In her petition, Kiernan closed by stating that her people were 'very respectful', while the Garda Report also confirmed the good standing of her extended family.[48] Christina Russell was also released unconditionally; the support of her family throughout her imprisonment is evident in their frequent letters and visits, demonstrating that a support network was often viewed as necessary before women could be released home.[49] Catherine Aherne, who was also released unconditionally to her family, benefited from significant family support. Her mother undertook to look after Catherine, claiming that 'there will be no difficulty in getting suitable and permanent employment' for Catherine. Catherine's family also submitted their annual income and employment details.[50] Elizabeth and Rose Edwards were both supported by numerous petitions and letters from their parents expressing their desire to have them return home; Rose was unconditionally released after less than two

[46] NAI Department of Justice 18/3110A. Petition of Mary Somerville, 14 December 1940.
[47] NAI Department of Justice 234/1491. Letter to Governor of Mountjoy Prison, 27 January 1927.
[48] NAI Department of Justice 234/1491. Petition of Mary Kiernan, 31 January 1927 and Garda Report, undated.
[49] NAI Department of Justice 234/3332. Note from Governor of Mountjoy Prison, 1 June 1933.
[50] NAI Department of Justice 234/2603. Letter from MJ O'Connor & Co. Solicitors, 10 June 1933.

years, while Elizabeth was also eventually released to her family after a number of years.[51] Guarantees of employment, or a respectable and financially secure family, provided convincing justifications for unconditional release. However, the ability to rely on such resources was not universal among the women.

Petitioners who provided a concrete plan for the future were also more likely to be successful in securing release. Frances Cox, also released unconditionally, cited her financial stability, 'I will not be destitute as I own the farm and have an income from the letting of it since my mother's death'.[52] Frances Cox's petition was pragmatic, she undertook to be 'a law abiding citizen', and continued 'I am very anxious to get re-established in life while I am still young enough.' Cox also benefited from undertakings given by a member of the Salvation Army who had met Frances through prison visiting.[53]

The two-tier nature of release was demonstrated by a letter from Miss Boland on behalf of Christina Russell, Boland was a member of the Visiting Committee for Mountjoy Prison; Boland asked if the 'authorities might allow [Christina] to go to a Convent for some time, perhaps, if they will not release her altogether'[54] Women would be released unconditionally in certain cases only. The foregoing has shown that this was largely based on the circumstances of the women's families, and their means and ability to provide for themselves in the future.

Throughout the archival records there was evidence that the Department of Justice sought to release women from prison where possible, once a perceived appropriate sentence length had been served. Prison was viewed as a place for habitual criminals; a memorandum regarding women charged with infanticide reported that prison was a 'vile influence' which made first offenders 'embittered, hardened and morally decadent'.[55] When Christina Russell had her sentence commuted to penal servitude for life, the Department of Justice noted 'Her case with others similarly sentenced will be placed on the list for periodic review with a view to determining when they might be released.'[56] The

[51] NAI Department of Justice 18/885A.
[52] NAI Department of Justice 18/11757A. Petition of Frances Cox, 21 November 1956.
[53] NAI Department of Justice 18/11757A. Memorandum from Governor of Mountjoy Prison, 3 December 1956.
[54] NAI Department of Justice 234/3332. Letter from Miss Boland to Judge McElliot, 13 November 1933.
[55] DDA Archives of Archbishop John Charles McQuaid. AB8/b/XXVIII/983. Memorandum prepared by EM Carroll, Probation Officer at Dublin Metropolitan Courthouse, forwarded in a letter, 9 July 1941.
[56] NAI Department of Justice 234/3332. Minute Sheet, January 1931.

Department appears to have regularly contacted the Governor of Mountjoy Prison to enquire about the status of long-serving female convicts; but equally it was stated that Hannah O'Leary *should* have been considered for release when she had served 10 years of her sentence, an anniversary which came and went unmarked.[57] When Hannah Flynn was finally released from prison, the Roman Catholic chaplain wrote:

> My only regret is that this good news came while I am on retreat, and so I could not take the pleasure of giving it to Hannah myself. We will have to release Margaret Dillon now – the only Female Convict left![58]

This correspondence is from 1942, when the number of female convicts in Irish prisons was dropping to an all-time low resulting in the aforementioned closure of female prisons.[59] Evident also, in the archives, were notes of caution regarding release from prison, sometimes related to the particulars of the offence, such as the recommendation that Christina Russell should serve five years in prison because her case of infanticide was viewed as 'rather a bad case'.[60] The obliviousness of some of the women to discussions about their future is clear in the correspondence on Hannah O'Leary and Hannah Flynn, in which the Department of Justice wrote to the Governor of Mountjoy Prison that, 'The prisoners should not be permitted to obtain any inkling that the question of their release on licence is under consideration.'[61]

While many women therefore disappeared relatively quickly from the official criminal justice system, many were instead confined in the grey area of religious-run institutions. Prison was viewed as an unsuitable environment for many reprieved women, but this did not mean that unconditional release was considered appropriate for all women. For those women who could not demonstrate that they were worthy of release, perhaps due to the perceived unsuitability of their family, religious-run institutions became an alternative site of confinement.

---

[57] NAI Department of Justice 18/2770A. Letter from Mountjoy Prison to Minister for Justice, 1 January 1938 enclosing details of female convicts undergoing a sentence of penal servitude for life who have served 10 years of their sentence, in compliance with a Circular of 426 of 19 August 1894.
[58] NAI Department of Justice 18/2769A. Letter from John Kelly, Holy Cross College, Clonliffe to Governor of Mountjoy Prison, 30 September 1942.
[59] Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011).
[60] NAI Department of Justice 234/3332. Memorandum from Stephen Roche to the Minister for Justice, 17 November 1933.
[61] NAI Department of Justice 18/2770A. Letter, 27 January 1939.

Religious-Run Institutions

The institutional confinement of women and children, in particular, has formed the subject of a number of publications over the past two decades which have exposed the mistreatment of vulnerable persons under the care of religious orders and congregations in Ireland post-Independence.[62] The McAleese Report was the final report of a Committee established to inquire into State involvement with Magdalen laundries.[63] The McAleese Report is therefore particularly relevant regarding discussion of the 21 reprieved women within the sample. However, the Report has also been criticised as conservative in its findings and its scope. For example, the Report investigated 10 Magdalen laundries; however, the Daughters of Charity institution at Henrietta Street in Dublin and the Protestant-run Bethany Home were not included within its purview although they were the post-prison disposals for some women within the sample.[64]

Throughout the McAleese Report, two narratives struggle for primacy; the narrative of the women who experienced the institutions and those advocacy groups who campaigned on their behalf, and the narrative of the religious orders and congregations which operated the institutions. To temper the conservatism of the McAleese Report, academic work, such as that referenced in Chapter Three, has offered searing accounts which attempt to show the lived experiences of persons who were confined in religious-run institutions.[65] Throughout this section, the words of both the confined women and those in positions of authority offer yet another account of the use of semi-penal sites of confinement.

---

[62] Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999); James Smith *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008); Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).

[63] Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013).

[64] The Committee was asked to investigate these various other sites in which women were detained, however various decisions made about what constituted a 'laundry' ensured a narrow scope. For example, Henrietta Street, not included within the Report parameters, was where Deborah Sullivan was conditionally released from prison. While there, Deborah engaged in 'Laundry Work'. The usefulness of her industry is expressed in the line in a Garda Report that 'She continues to give satisfaction.' NAI Department of Justice 234/2590. Garda Report, 1 October 1931. In a memorandum of 1941, Probation Officer EM Carroll explicitly confirms that Henrietta Street survives through its laundry function, see DDA, Archives of Archbishop John Charles McQuaid. AB8/b/XXVIII/983. Memorandum prepared by EM Carroll, Probation Officer at Dublin Metropolitan Courthouse, forwarded in a letter of 9 July 1941.

[65] Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999); James Smith *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008); Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).

Of 21 reprieved women within the sample, 11 were conditionally discharged from Mountjoy Prison to religious-run institutions. Table 7.3 below lists the institutions to which the women were sent. As well as these 11 women, Kate Owens was discharged to a paid situation with the Sisters of Charity, St. Monica's, after almost five and a half years in prison.[66]

Name	**Institution**
Hannah Flynn	Good Shepherd Convent, Limerick
Mary Moynihan	Daughters of Charity, Henrietta Street, Dublin
Hannah O'Leary	St. Vincent's, Mary's Road, Cork
Elizabeth Hannon	Our Lady of Charity Refuge, High Park, Drumcondra, Dublin
Mary Anne Keane	Sisters of Charity, Donnybrook, Dublin
Deborah Sullivan	Daughters of Charity, Henrietta Street, Dublin
Margaret Finn	Sisters of Charity, Donnybrook, Dublin
Jane O'Brien	Daughters of Charity, Henrietta Street, Dublin
Elizabeth Edwards	Daughters of Charity, Henrietta Street, Dublin
Mary Somerville	Bethany Home, Rathgar, Dublin
Agnes McAdam	Good Shepherd Convent, New Ross, Wexford

Table 7.3: Women Conditionally Discharged to Religious-Run Institutions

Processes of Discharge and Entry to a Religious-Run Institution

Many women had expressed their willingness to enter these 'Homes' in the petitions they wrote from prison. For some women who had initially asked to be released to their family, such as Hannah Flynn, their petitions became more modest over time and adapted to reflect their legitimate expectations. In May 1942, Flynn had petitioned that she would 'be willing to accept any terms with regard to Licence to finish my 20 years if I were allowed out'.[67] Discussions of what was to be done with Flynn include the note on her file, 'I may add that she herself does not want to go to a convent'.[68] In October of that year Hannah relented, stating in a petition, 'I am willing to go to the Good Shepherd Convent, Limerick and remain there.'[69] Mary Moynihan also began by petitioning to be released to her family, citing her mother's death and her father's situation, but from 1930 her petitions also included her willingness to enter a 'Home'. All Mary Moynihan's petitions until this point

[66] NAI Department of Justice 18/6678A.
[67] NAI Department of Justice 18/2769A. Petition of Hannah Flynn, 12 May 1942.
[68] NAI Department of Justice 18/2769A. Report prepared by P Connolly, 27 July 1942.
[69] NAI Department of Justice 18/2769A. Petition of Hannah Flynn, 8 October 1942.

had been refused, but in 1930 the Department of Justice, for the first time, began to consider her case for release seriously, prompting follow-up correspondence as the Department began to enquire about suitable institutions.[70]

These petitions were often facilitated by the encouragement of members of religious orders and congregations who visited Mountjoy Prison in a charitable capacity. Nuns from the institutions were regular visitors to the reprieved women while they were in prison. For example, it was reported that Kate Owens had 'for some time past been visited regularly by the Sisters of Charity' and that there was one Sister 'who was deeply interested in her.'[71] Chaplains working in the prisons similarly urged women to petition to be released to a 'Home'; many chaplains also worked behind the scenes to facilitate the transfer, providing liaison between Governors, the Department of Justice, Probation Officers and Reverend Mothers.[72] The support of prison chaplains was often instrumental in having women released from prison. Mary Moynihan received a huge degree of support from the Roman Catholic chaplain who persistently expressed his doubt as to her guilt, claiming he had 'never believed and do not now believe that Mary Moynihan was guilty of murder by actual participation in the act or by conspiracy prior to it.'[73] In a Lombrosian vein, the chaplain argued that in his 11 years working with convicts he had concluded that 'she is not the criminal type at all'. The chaplain argued that continued exposure to 'women, many of whom are a little mad, and nearly all completely bad' would provoke only 'despairing callousness' in Moynihan. Another Roman Catholic chaplain cited similar reasoning in the case of Elizabeth Hannon arguing that her release to a religious-run institution would provide 'whatever hope of permanent improvement' there was. He further outlined his view that she was not 'evily inclined' but was that 'type so frequently met with in prison who are led to evil without any great difficulty.'[74]

[70] NAI Department of Justice 234/1744.
[71] NAI Department of Justice 18/6678A. Memorandum, 12 April 1949.
[72] The possessive domain of chaplains within Mountjoy Prison can be demonstrated in an exchange relating to the request, by a Minister of the Jehovah Witness faith, that he be allowed to visit Mamie Cadden at her request. The Department of Justice noted that they were disinclined to allow the visit, and cites that the Catholic chaplain of Mountjoy would also 'strongly object' to this visit. NAI Department of Justice 18/3562. Letter, 13 March 1958.
[73] NAI Department of Justice 234/1744. Letter from John Fitzpatrick, Junior Roman Catholic chaplain, 6 November 1927.
[74] NAI Department of Justice 234/2016. Note of Canon McMahon, 2 February 1930.

The work of Protestant chaplains is also evident from the files on Mary Somerville; the Church of Ireland chaplain petitioned the Department for her release 'to one of our Protestant Homes for a period to be determined by you.' In this appeal there was also evidence of a pseudo-scientific reasoning, as he stated 'I do not think she has criminal tendencies.'[75] Interest from influential religious leaders was also evident, such as that shown by Archdeacon Cathal McCarthy who corresponded directly with the Minister for Justice on Jane O'Brien's release to Henrietta Street, deemed appropriate because 'it is a place to which persons are sometimes committed by court and especially one of the Sisters there has been visiting Jane weekly for years & is her trusted friend.'[76] Hannah O'Leary found a place in St. Vincent's in Cork through the efforts of the Discharged Female Prisoners' Aid Society.[77]

The procedure of conditional discharge which saw women released to religious-run institutions was somewhat vague. In practice, a special form of licence was issued to the women, which was conditional on their entry into a 'Home'; the obligation to report change of address to the local Garda station was duly remitted if the women entered these institutions.[78] The procedures were ad hoc and a lacuna existed whereby women could not be compelled to remain in the institution if they chose to leave. The government's only solution should women leave these institutions of their own volition was to entirely cancel the licence and return the women to prison, but this mechanism had not been availed of for decades.[79] The absence of official coercive power to direct that women remain in the institutions is due to the fact that the licences were not formally worded as conditional on entry to a 'Home'; to achieve this, each amended licence would have to be brought before both Houses of the Oireachtas, which the Department considered 'undesirable'. Instead of laying each licence before the Oireachtas, a policy designed 'to discourage the insertion of harsh, tyrannical or absurd conditions,' it was the practice to 'bargain' with the licensee who would accept conditional release in exchange for the waiving of the duty of reporting

[75] NAI Department of Justice 18/3110A. Letter, 14 November 1940.
[76] NAI Department of Justice 18/2737A. Letter from Cathal McCarthy, 9 July 1941.
[77] NAI Department of Justice 18/2770A. Memorandum, 20 August 1942.
[78] Female convicts were otherwise required to report change of address to the nearest Garda station, while male convicts were required to report monthly. The licences were issued under the Penal Servitude Acts 1853 to 1891, and the remitting of reporting requirements was provided for by Section 5 of the Prevention of Crime Act 1871.
[79] See NAI Department of Justice 234/2590 file on Deborah Sullivan. Minutes, 29 October 1929, for discussions on this.

to the Guards.[80] This lack of formal coercive power did not diminish the unofficial coercive capacity of conditional release which was noted by the Department in their comment that women were 'unlikely' to leave despite the lack of formal power compelling them to remain.

Admission to a 'Home' was also conditional on the women's acceptance by the particular institution; and there are cases in which women were initially refused entry. The Reverend Mother of the Good Shepherd Convent in Limerick had at first refused to take Hannah Flynn.[81] Flynn had been declined by a number of institutions, prompting the Department to despair 'I don't see that we can do anything in this case.' The Department outlined their unsuccessful attempts to have Flynn placed in an institution:

> The authorities at Our Lady's Home, Henrietta Street, who undertake the care of female prisoners on discharge, have definitely declined to take her, and enquiries by the Governor from all Institutions, including the Good Shepherd Convent, Limerick, have been equally unsuccessful.[82]

That the reprieved women were 'shopped' around various institutions is evident in the letters in the archives demonstrating how a number of institutions could be approached to ascertain which would accept the woman, or which provided the most suitable 'fit'.[83] In the case of Margaret Finn, a plan of action was outlined whereby first the Magdalen laundry at Donnybrook, and then High Park at Drumcondra, would be approached.[84]

Criminals and Sinners

The women within the sample were understood according to a binary of criminals versus sinners. For example, there were perceived degrees of condemnation attached to each institution; Henrietta Street Convent was considered suitable for women who had not 'fallen', hence its stated inappropriateness for Margaret Finn, capitally convicted for the infanticide of her illegitimate infant.[85] Probation Officer Kathleen Sullivan,[86] writing to the

[80] NAI Department of Justice 234/1744.
[81] NAI Department of Justice 18/2769A. Note, 6 October 1942.
[82] NAI Department of Justice 18/2769A. Report by P Connolly, 27 July 1942.
[83] For example, Gloucester Street was first considered for Agnes McAdam, but she ultimately went to the Good Shepherd in Wexford, see NAI Department of Justice 18/9074A.
[84] NAI Department of Justice 234/3118A.
[85] NAI Department of Justice 234/3118A.

Department of Justice in 1930, said that Henrietta Street was 'open to girls who have erred in other directions, but who have not led a life of vice.'[87] Probation Officer EM Carroll noted in 1941 also that Henrietta Street was for the 'better types'.[88] Mary Moynihan was first accepted into the Sisters of Charity at Donnybrook in Dublin, a Magdalen laundry,[89] but Probation Officer Sullivan viewed this institution as unsuitable:

> This latter Convent is a Home for Penitents, and I should not like a girl, who was under twenty when [she went] to Mountjoy, and who had not associated with women of evil life, to be placed among such women, if a convent of a different type is willing to receive her. The Convent in Henrietta Street does not receive women of the unfortunate class, and for this reason is, in my opinion, more likely to have a reformative effect on Mary Moynihan than a Magdalen Home would have.[90]

The Magdalen laundries offered an alternative to Henrietta Street, Carroll noted that supervision in such institutions was 'strict', she referred to the expectation of lifelong confinement in these sites also, 'with the purpose of leading the subjects to permanent renunciation of the world and to a life of penance'.[91] That this purpose was often met is evident in the outcomes for the women herein. Of the seven women who either died in a religious-run institution, or who died shortly after release to hospital from such an

---

[86] Before a formalised probation service existed in Ireland, convicted persons were often released on their own recognisance or were supervised by court missionaries. The 1907 Probation of Offenders Act established a more formal system, limited initially to Dublin, but the involvement of church missionaries continued. The Irish probation service remained relatively small-scale, informal and supplemented by religious voluntary members until the 1970s. The Probation of Offenders Act 1907 had established a somewhat more formal system, one Probation Officer was recruited, Miss Dargan, and a Miss O'Brien was a voluntary assistant. Probation Officers in Ireland were all female until 1936. Following Miss Dargan's death in 1926, Kathleen Sullivan was recruited and Miss O'Brien was made an official Probation Officer. Gerry McNally writes that the probation officers exercised 'significant influence and authority', for example Sullivan was instrumental in having Mary Cole, a 15-year-old girl convicted of two murders, held in Henrietta Street institution rather than Mountjoy Prison. Kathleen Sullivan died in 1936 and was succeeded by Evelyn Carroll. Miss O'Brien died in 1937. In 1938, Bridget Murphy and Mary E Ryan were appointed, bringing the number of probation officers in Ireland to three for the first time, Gerry McNally (2007) 'Probation in Ireland: A Brief History of the Early Years', *Irish Probation Journal*, 4(1) 5-24, at 9.

[87] NAI Department of Justice 234/1744. Letter from Kathleen Sullivan to Department of Justice, 21 June 1930.

[88] DDA Archives of Archbishop John Charles McQuaid. AB8/b/XXVIII/983. Memorandum prepared by EM Carroll, Probation Officer at Dublin Metropolitan Courthouse, forwarded in a letter of 9 July 1941.

[89] NAI Department of Justice 234/1744. 12 March 1930.

[90] NAI Department of Justice 234/1744. Letter from Kathleen Sullivan, 21 June 1930.

[91] Carroll also noted that girls known to have been in Magdalen laundries were not accepted into the Catholic Girls' Hostels in Dublin and could also be refused by Reformatory Schools. DDA Archives of Archbishop John Charles McQuaid. AB8/b/XXVIII/983. Memorandum prepared by EM Carroll, Probation Officer at Dublin Metropolitan Courthouse, forwarded in a letter of 9 July 1941.

institution, or for whom no outcome is known, six had been discharged to Magdalen laundries.

The paradox of culpability meant that women who had killed adults were considered more amenable to rehabilitation than women who had killed illegitimate infants, suggesting that sex was the graver sin than murder. Women convicted of infanticide were considered less 'criminal', but more morally culpable. Indeed, 'The notion of moral criminality was ingrained in most public debates on the issue of illegitimacy.'[92] Women who had 'fallen' were deemed more suitable for places like the Magdalen laundry in Donnybrook. This differentiation of women based on whether they had 'fallen' is evident in the distinction made between Elizabeth and Rose Edwards. Rose was released unconditionally from prison, whereas Elizabeth was discharged to Henrietta Street to spend another year and three months there before her eventual release. Elizabeth and Rose had been convicted of the murder of Elizabeth's illegitimate infant, but while the offence was the same for both, the 'sin' of illegitimacy was Elizabeth's alone.[93] Although guidelines existed which sought to mitigate the harshness of the law for women convicted of infanticide, these same women were condemned to a greater extent for their immorality and this was evident in differential discourses on confinement.

Time Spent Coercively Confined in Religious-Run Institutions

The length of time spent in these institutions was to depend on the conduct of the individual women. Table 7.4 below demonstrates that the length of time varied considerably in each individual case.

Name	**Entry**	**Exit**
Hannah Flynn	23 Oct 1942	Released to hospital approximately 30 years later, died in hospital some years after this
Mary Moynihan	18 July 1930	Moved to paid situation in St. Philomena's, Stillorgan, Dublin, summer 1932
Hannah O'Leary	18 Sept 1942	Unknown
Elizabeth Hannon	17 July 1930	Died there approximately 30 years later
Mary Anne Keane	4 Nov 1930	Unknown, Keane was still there in July 1936
Deborah Sullivan	2 Nov 1929	Moved to paid situation in St. Anne's,

[92] Lindsey Earner-Byrne (2008) 'Reinforcing the Family: The Role of Gender, Morality and Sexuality in Irish Welfare Policy, 1922-1944', *History of the Family*, 13(4), 360-369, at 364.
[93] NAI Department of Justice 18/885A.

		Northbrook Road, Dublin, Dec 1932
Margaret Finn	3 Oct 1933	Died there an unknown number of years later
Jane O'Brien	21 July 1941	Unknown
Elizabeth Edwards	6 Sept 1937	Released to family Dec 1938
Mary Somerville	23 Dec 1940	Left 14 Feb 1941
Agnes McAdam	30 Sept 1949	Unknown

Table 7.4: Time Spent in Religious-Run Institutions

As suggested earlier, consideration of time spent in religious-run institutions following conditional discharge from prison presents an alternative interpretation of the punishment of reprieved women.

Table 7.5 below shows the total time reprieved women spent confined in various penal and semi-penal sites of confinement. Once this time is accounted for, the experiences of reprieved women appear signally different.

Name	**Total time confined from date of conviction**
Hannah Flynn	Approx. 48yrs 7mths (died in hospital)
Mary Moynihan	Approx. 7yrs 7mths, released to paid situation in religious-run institution
Hannah O'Leary	Unknown, but at least 17yrs 2mths
Elizabeth Doran	4yrs 11mths (majority in Criminal Lunatic Asylum)
Elizabeth Hannon	Approx. 32 years (died in religious-run institution)
Mary Kiernan	6mths
Mary Anne Keane	Unknown, but at least 5yrs 7mths
Deborah Sullivan	3yrs 5mths
Catherine Aherne	3yrs 11mths
Annie Walsh (1929)	6yrs 7mths
Christina Russell	3yrs 3mths
Margaret Finn	Unknown, at least 4yrs 7mths (died in religious-run institution)
Jane O'Brien	Unknown, at least 9yrs 1mth
Elizabeth Edwards	3yrs 8mths
Rose Edwards	1yr 8mths
Mary Somerville	2yrs 3mths
Kate Owens	5yrs 5mths, released to paid situation in religious-run institution
Agnes McAdam	Unknown, at least 3yrs 7mths

Mary Bernadette Agnes Daly	4yrs 8mths[94]
Frances Cox	7yrs 4mths
Mamie Cadden	2yrs 6mths (died in Criminal Lunatic Asylum)

Table 7.5: Total Time Confined in Prison and Religious-Run Institutions from Date of Conviction[95]

From Table 7.5, the disparity in the length of time reprieved women spent coercively confined becomes even more apparent.[96] Hannah Flynn was convicted at the age of 28, and spent the rest of her life either in prison or in a religious-run institution. Mary Kiernan in contrast spent only six months in prison before she was released.

For many of the women, the exact time spent coercively confined is unknown. This is because, although conditional discharge to religious-run institutions was recorded by the Department of Justice, the eventual release of the women (for those who were released) was not. Further information was gleaned from the McAleese Report, which presented three anonymised case studies which were identified as three women within the sample. From matching these anonymised case studies, it is known that two of the 21 reprieved women within the sample died in a religious-run institution; another woman was eventually released to a hospital where she died some years later.[97] The lack of access to the archives of religious orders and congregations (archives opened for the researchers on the McAleese Report only) renders investigation of the fates of the other women difficult.

For women without appropriate family support, or for women who were deemed incapable of caring for themselves, confinement could be lengthy or even lifelong. As noted, there are no recorded release dates for these women in the Department of Justice archives and some vague outcomes have been ascertained from the McAleese Report for some women.

[94] The case of Mary Agnes Bernadette Daly presents some uncertainties, a documentary on her case suggested she spent 10 years in a convent following her release from prison, but there is nothing to confirm this in the Department of Justice archives which instead cite a date for release on indefinite licence of 23 November 1953. The information that she spent 10 years in a convent is from *Idir Mná* (Season 2, Episode 3) (Midas Productions Ltd, Ireland, 2009) aired Tuesday 12 October 2010 TG4. The documentation bearing the date of the indefinite licence is in NAI Department of Justice 171/7781. Penal Record of Convict.

[95] It should be noted again that time is calculated from date of conviction, and does not include time spent on remand.

[96] Further echoing the finding of Doyle and O'Donnell that there was significant disparity in the length of time reprieved women served in prison. See, David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independent Ireland', *Journal of Legal History*, 33(1), 65-91.

[97] The McAleese Report recorded that an estimated 8.8 per cent of women either died in a Magdalen laundry or died elsewhere and were buried there. The Report found 879 of these cases.

However, for Hannah O'Leary, Mary Anne Keane, Jane O'Brien[98] and Agnes McAdam, the eventual outcome is unknown. An enquiry sent to the Department of Justice in 1965 on the case of Agnes McAdam, who was released from prison to a 'Home' in 1949, received the response: 'the subject of your enquiry was released several years ago to the care of a religious community. It is not known to the Department if the person is still alive.'[99] These were all women without family, or without suitable family. Table 7.6 at the close of this chapter, on page 262, provides a listing of the post-reprieve outcomes for the 21 women.

Hope of Release

Despite the seemingly arbitrary decision-making regarding confinement, reprieved women were informed that the date of their eventual release from a religious-run institution was largely dependent on their own conduct. Hope of release was generally extended to women being conditionally discharged to these sites. Probation Officer Sullivan noted that the women were informed of this when leaving prison and Sullivan frequently reminded the Department of Justice of their pledge to release the women. These assurances were also sometimes invoked by the women, such as in the case of Mary Anne Keane, who reminded Sullivan when she visited her in the Magdalen laundry at Donnybrook that her eventual release had been promised.[100] On the file of some women, such as Margaret Finn below, explicit instructions along these lines are evident in correspondence from the Department of Justice to the Governor of Mountjoy Prison:

> The convict should be informed that while she is liable to be detained in the Institution named, she may, if her conduct is satisfactory, be released in a few years, the period being largely dependent on her good behaviour.[101]

Despite this pledge, factors extraneous to the women's conduct were also essential in determining their release, and often eclipsed the good conduct of the women. These factors included 'wantedness', concerns for the future care of women, the circumstances of the woman's family and judgements on the intellect of individual women.

---

[98] Later newspaper accounts of Jane O'Brien state that she died in prison in the 1960s, aged in her 80s. However, the archives demonstrate that Jane was definitely conditionally discharged from prison. Further, these newspaper articles state that Jane was the last woman sentenced to be hanged in Ireland, further casting doubt on the veracity of any information which could be gleaned from these accounts. See 'Bridget Ennis and Bridget Butterly' *Irish Independent* (25 February 2012).
[99] NAI Department of Justice 18/9074B. Letter, 15 February 1965.
[100] NAI Department of Justice 18/3540.
[101] NAI Department of Justice 234/3118A. Letter, 26 September 1933.

'Wantedness'

The issue of 'wantedness' and concerns for the future care and supervision were incorporated into decision-making. As noted in the previous section on unconditional release from prison, support structures were essential to escaping the bonds of these institutions. Mary Moynihan received letters and visits from her family throughout her time in prison and the goodwill experienced by Moynihan continued through her period of confinement in Henrietta Street; Moynihan was released from Henrietta Street in 1932.[102] Elizabeth Edwards was also supported from outside by her family members who continually petitioned that she might be released from the institution:

> Regarding my unfortunate daughter, Elizabeth Edwards who suffered so much then being sentenced to death, if nothing more it was enough to ruin her health and nerves for life, I'm now asking you in your kindness of heart to allow her home to me for this holy feast Xmas, when all members of family are anxious to be together.[103]

Elizabeth was released to her family in the same month that this letter was received, demonstrating the importance of familial love and support. In contrast to these displays of 'wantedness', Hannah O'Leary remained for almost two decades in prison before discharge to a religious-run institution because no one could be found who would undertake to care for her: 'The question of her release on licence has been considered from time to time but nothing could be done in the matter as she had neither home nor relatives and no Institution was willing to take her.'[104] The loneliness of Hannah O'Leary's time in prison is clear from the consideration of her eventual release to a 'Home'.

> She has frequently made it known here that she has no relatives. On committal she gave the name of her mother, Mrs Hannah O'Leary, Kilkerrin, Roscarberry, as her next-of-kin, but she has since died. She has not written to, or been visited by, anybody since she was committed, and she has not received any letters.[105]

[102] NAI Department of Justice 234/1744.
[103] NAI Department of Justice 18/885A. Letter from Mrs Kathleen Edwards, 1 December 1938.
[104] NAI Department of Justice 18/2770A. Memorandum, 20 August 1942.
[105] NAI Department of Justice 18/2770A. Letter from Governor of Mountjoy Prison, 8 January 1937.

Agnes McAdam was also transferred from Mountjoy Prison to a 'Home' as her family refused responsibility for her and suggested instead that she enter a convent.[106]

Family Suitability

There was another hurdle to surmount, even in cases where the woman's family actively sought their return; if the family were judged unsuitable, the woman's stay in prison could be prolonged and she could be transferred to institutional detention with no definite prospect of release. This occurred in the case of Hannah Flynn, who, in common with Hannah O'Leary, was discharged to a religious-run institution after almost two decades in prison. This protracted period of confinement was largely a result of the perceived unsuitability of her family who were considered 'not normal'. Unsuitability often seemed to be a coded reference to poverty or the perceived immorality of the woman's family. Hannah Flynn's family were the subject of very unflattering reports by the local Garda many of which were derived from the family's reduced circumstances and perceived abnormality, such as the comment that 'the kitchen contains only crude articles of furniture' and the opinion that 'All members of the family are willing to receive Hannah, but as they still appear to be sub-normal mentally, it is thought they would not be suitable to take care of the prisoner.'[107] These opinions were bolstered by a personal acquaintance of the Governor of Mountjoy Prison who wrote to inform him that due to the 'sub-normal' intellects of her siblings, one of whom was 'all but dangerous', he recommended that while he 'should be very sorry to deprive anybody of their liberty… home, such as it is, is not the best place for Hannah Flynn.'[108]

The perceived immorality of Margaret Finn's mother, whose character was described as 'not very exemplary', also prevented her unconditional release, despite the petitioning of her mother; instead, Margaret's illegitimate brother was cited as evidence of the unsuitability of her family home.[109] Compounding this lack of respectability, Margaret Finn's mother was also reported to be 'not in possession of any land save two small

[106] NAI Department of Justice 18/9074A. Note from Roman Catholic chaplain, 4 March 1949, and letter from Agnes's family, 15 March 1949.
[107] NAI Department of Justice 18/2769A. Garda Report, 29 May 1942.
[108] NAI Department of Justice 18/2769A. Letter from Gerald Foley to Governor Sean Kavanagh, 19 February 1939. In the Garda Report, 8 February 1939, Hannah's brother was recorded as being in the employment of a farmer named Gerald Foley.
[109] NAI Department of Justice 234/3118A. Garda Report, 31 July 1933.

gardens.'[110] Mary Anne Keane's release from a religious-run institution was conditional on her husband's agreement to take her back into his home and Patrick's Keane's refusal to accept his wife prolonged Keane's confinement.[111]

Infantilisation

The paternalistic infantilisation of women in religious-run institutions has been noted by persons who have produced research in the area.[112] This infantilisation can be linked with the officially stated need to secure supervision for women before release could be considered. As outlined above, women who could not demonstrate the presence of suitable guardians would not be considered eligible for release. The further infantilisation of women in these institutions is evident in the judgements made about their mental capacity. This was evident in the case of Elizabeth Edwards, following the Department of Justice refusal to permit her to leave Henrietta Street, the decision was justified thus:

> This decision by the Minster has not been actuated by a desire to impose further punishment on this woman, but to afford her protection for a little longer against herself in view of her known weakness and her admitted inability to look after herself.[113]

This was also evident in the refusal to release Mary Anne Keane and Elizabeth Hannon, in 1932, at the urging of Probation Officer Sullivan as they were considered 'safer where they are' as neither was 'fit to face the world'.[114] Mary Anne Keane was considered 'of low mentality', incapable of domestic work, and 'very likely get into trouble' if released.[115] Elizabeth Hannon was judged to be 'almost a mental defective';[116] this was despite Hannon's ability to hold down a paid position outside the home as a domestic servant prior to her arrest. The judgements of those belonging to the religious orders and congregations to which the women were sent were also instrumental in governing whether women would eventually be entirely released. Again, on the case of Elizabeth Hannon:

---

[110] ibid.
[111] NAI Department of Justice 18/3540.
[112] See, for example, Frances Finnegan, *Do Penance or Perish: A Study of Magdalen Asylums in Ireland* (Congrave Press 2001); James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008).
[113] NAI Department of Justice 18/885A. Letter to Governor of Mountjoy Prison, 26 September 1938.
[114] NAI Department of Justice 234/1744. Memorandum prepared by Stephen Roche, 15 April 1932.
[115] NAI Department of Justice 18/3540. 14 June 1929.
[116] NAI Department of Justice 234/2016. Document, 15 January 1932.

> [T]he authorities in High Park do not recommend an early release as she has settled down and appears content.… [S]he never speaks about the future or asks about her eventual release. They consider her very much below normal in intellect and think she would not be very safe in the world.[117]

Of 12 women released to religious-run institutions, including the case of Kate Owens, seven had been convicted of infanticide. Many women capitally convicted for the infanticide of their illegitimate infant were considered to be of 'low mentality'. The designation of these women as mentally frail facilitated their confinement in semi-penal religious-run institutions. The confinement of the five women who had been convicted of the murder of an adult was also justified through the use of pathologised discourses suggesting 'low mentality'. Therefore, for women like Mary Moynihan and Mary Somerville, who demonstrated greater agency, they spent less time in these post-prison institutions.

The women's lived experience of religious-run institutions, evident in excerpts within the McAleese Report,[118] further compounded the infantilisation and would appear to disabuse the notion that such institutions were not places of punishment, evident in the terminology which saw the women referred to as inmates,[119] and Penitents.[120] A Garda Report on Deborah Sullivan noted the regime in Henrietta Street:

> The Licence Holder is engaged working in the scullery in the Home and is supervised by the Sisters there at all times. She is also allowed to take exercise, in company with about 36 other inmates, through the City. On such occasions the whole party is in charge of four or five Sisters.[121]

Descriptions, such as this, of the regimes in these institutions, represented them as semi-penal sites. Another manifestation of this status was the policy in some institutions that women not use their real names. It was suggested, for example, that Elizabeth Edwards

[117] NAI Department of Justice 234/2016. Document, 13 April 1932.
[118] Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013).
[119] NAI Department of Justice 18/885A. Roman Catholic chaplain's reference to women in Henrietta Street, 29 September 1938.
[120] NAI Department of Justice 234/1744. Information provided by Probation Officer Sullivan, 24 January 1932, regarding four women, including Mary Anne Keane and Elizabeth Hannon to whom this terminology was applied.
[121] NAI Department of Justice 234/2590. Garda Report, 13 November 1929.

assume a different name on entry to Henrietta Street; although the Department of Justice refused this request.[122]

The McAleese Report has addressed this issue, by arguing, counter to the women's opinion that this tactic was punitive, that in some cases the institutions merely sought to conceal the privacy of individual women. However, this was not how such regime details were experienced by the women themselves.[123] The need for secrecy was stated prior to Agnes McAdam's entry to the Convent of the Good Shepherd in Wexford by the Superioress of this institution who wrote to the chaplain 'Please Father, will you impress on her the necessity of keeping her secret? No one here will ever know anything about her except self and the Sister in charge of the girls.'[124]

Productivity

Release from the religious-run institutions was also bound up with the construction of the detained women as productive citizens. Conversely, in the case of Mary Anne Keane, her lack of suitability for domestic service was associated with her perceived 'low mentality.'[125] Industry was considered a marker of a redeemed woman and her worth was equated with her potential future contribution to society, expressed as labour. This vein is present in the example of Mary Moynihan, who had a glittering 'career' through the institutions of the prison and the convent, the Roman Catholic chaplain in Mountjoy Prison believed she 'would lead a useful life if released while still young.'[126] Indeed, Moynihan's productivity and corresponding redemption led to her being offered a paid situation following her release from Henrietta Street. Many of these decisions, such as Moynihan's, to take such work were related to the difficulties associated with returning to the woman's local area, Moynihan was sent to St. Philomena's in Dublin in August 1932.[127] In Deborah Sullivan's case also, she took a paid situation in a convent because, 'She does not want to

[122] NAI Department of Justice 18/885A. Letter from Chief Wardress Miss Waters, 17 July 1937 and from Reverend Mother, 24 August 1937.
[123] Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013).
[124] NAI Department of Justice 18/9074A. Letter from Superioress, 13 August 1949. Underlining in original.
[125] NAI Department of Justice 18/3540.
[126] NAI Department of Justice 234/1744. Letter from Roman Catholic chaplain, 8 November 1927.
[127] On the file of Elizabeth and Rose Edwards, NAI Department of Justice 18/885A.

face the neighbours around her home.'[128] Sullivan was released in December 1932 to work in St. Anne's in Dublin.[129]

Kate Owens had been offered a paid situation as a maid in St. Monica'a Home on her release from Mountjoy Prison, as her 'conduct and industry have been excellent throughout her sentence',[130] elsewhere Owens was referred to as a 'star' prisoner, because of her conduct and industry.[131] The Sisters of Charity wrote to the Department that they were 'very interested' in Owens, and that St. Monica's had 'seventy widows there at present, and a person of Kate's stamp would suit admirably.'[132] Kate Owens's suitability for domestic work was also referenced by a letter from a woman who had visited her in prison, who noted that she 'has good hands for housework.'[133] Kate Owens was still residing in St. Monica's in 1951, but by 1956 she reported to the Garda that she had 'a very nice place here… I am nearly two years here and the people I work for don't know anything of my past'.[134] Owens was subsequently relieved of the duty to report change of address to the Garda.

Garda Reports

Garda Reports often demonstrated lingering suspicion and ill-feeling towards women when questions of release arose and, as noted in the previous chapter, Garda often exhibited harsher views than others in the criminal justice system about the women. For example, in the case of Hannah Flynn, until the husband of the victim passed away, Garda Reports continually recommended that her release to her family would provoke only bad feeling and possible trouble. The Reports also made repeated reference to the unsuitability of the Flynn family.[135] Equally, Garda Reports recommended detaining women for lengthier periods if substantial efforts had gone into the investigation in an attempt to balance the effort expended on the case, such as the extensive search for the body of the infant of Elizabeth Edwards.[136] Regarding Mary Moynihan, the chaplain of Mountjoy Prison

[128] NAI Department of Justice 234/2590. Letter from Probation Officer Sullivan, 27 June 1932.
[129] On the file of Elizabeth and Rose Edwards, NAI Department of Justice 18/885A.
[130] NAI Department of Justice 18/6678A. Memorandum, 11 April 1949.
[131] NAI Department of Justice 18/6678A. 4 March 1949.
[132] NAI Department of Justice 18/6678A. Letter, 16 March 1949.
[133] NAI Department of Justice 18/6678A. Letter, 25 November 1948.
[134] NAI Department of Justice 18/6678B. Letter from Kate Owens, 14 September 1956.
[135] NAI Department of Justice 18/2769A. Report prepared by P Connolly, 27 July 1942.
[136] NAI Department of Justice 18/885A.

claimed that the Minister for Justice, Kevin O'Higgins, had told him that 'in view of the extended investigations… no action could be taken' on her early release.[137]

The above sections have demonstrated how factors beyond the control of the women influenced the lengths of time they spent in religious-run institutions. A woman's own agency *could* dictate the length of her detention but this was understandably rare and occurred in one case only, that of Mary Somerville. Somerville was an older woman who had farmed her own land prior to her arrest and she demonstrated greater reserves of confidence and resilience than many other women. While in prison, she petitioned for release with a comprehensive account of her future plans, she wrote that her son had arranged accommodation for her on her release from prison and that she would have an income through sewing work; she further undertook not to interfere in the education of her three youngest children who had been placed in an institution in Dublin.[138] Somerville provides a rare example of the exercise of determined agency. Somerville was duly released to the Bethany Home, an institution run by the Church of Ireland, on 23 December 1940 but she left on 14 February 1941 having made the necessary arrangements. Somerville wrote to the Department of Justice to inform them, leaving a forwarding address:

> Just a line to let you no [sic] I am now leaving Bethany Home and is going to see my son in the Co Down who is home on seven days leave from the airforce. I am going to make my home there my new address is C/o Mr Law…. Yours truly, Mary Somerville.[139]

In 1942, Somerville wrote again from her residence in Belfast, and asked, and was refused, a free pardon.[140] Such agency is anomalous. Other women, such as Mary Anne Keane, were unhappy in the religious-run institutions, but none possessed the personal resources to realise their desire to leave. It was noted in 1936, that Keane was 'very unsettled in the Convent and desires to be liberated on licence.'[141] Despite the informality and discretionary nature of the women's detention, the implicit coercive power, as experienced

[137] NAI Department of Justice 234/1744. Letter from John Fitzpatrick, Junior Roman Catholic Chaplain to Minister for Justice, 6 November 1927.
[138] NAI Department of Justice 18/3110A.
[139] NAI Department of Justice 18/3110A. Letter, undated.
[140] NAI Department of Justice 18/3110A.
[141] NAI Department of Justice 18/3540. Letter from Probation Officer Mary O'Brien, 7 May 1936.

by women who were already marginalised, was overwhelming. The McAleese Report stated that women referred by the criminal justice system, 'were made aware of why they were there and – in the case of court referrals – how long they were required to stay'; this was not applicable to the women informally transferred from prison to such institutions herein.[142]

Informal Confinement

The informal and discretionary processes which governed transfer to and release from religious-run institutions can be seen in a comment from Stephen Roche, the Secretary at the Department of Justice, in relation to Christina Russell, who was being considered for release from prison either to a religious-run institution or to her family, after three years in prison: 'I always approach a case of this kind with the helpless sort of feeling that there is no reliable standard for one's guidance.'[143] The discretionary nature of the confinement, and the tacit acceptance that women remained in the institutions by virtue of informal coercion was made clear in the following comment on Elizabeth Edwards' continued confinement:

> I am still of opinion that she might safely be permitted to return home, & we have in any event no power to keep her in the Home if she leaves of her own volition as residence in the Home was not a condition of her licence.[144]

However, the influence of this coercive power, although informal, was significant. The lack of knowledge of their ability to leave the institutions was also of paramount importance and ensured that all but one woman remained there until expressly given permission to leave. Probation Officer Sullivan was of the opinion that the provision of a future release date would aid the rehabilitation of the women:

> It does seem desirable that the Rev Mother of Convents to which prisoners undergoing a life sentence are sent should be in a position to hold out some tangible hope of release. It is perhaps difficult to bind yourself at this stage to any very short term, but I think the prisoner could be assured that there was no

[142] Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013) at 3.
[143] NAI Department of Justice 234/3332. Letter from Stephen Roche to the Minister for Justice, 17 November 1933.
[144] NAI Department of Justice 18/885A. 3 December 1938.

> question of holding her for life, and that if she were well conducted and showed definite signs of reform she might expect to be released at the end of a few years.[145]

Probation Officer Sullivan and the Reverend Mother of Henrietta Street both held this view; however the Reverend Mother also required that women serving sentences of penal servitude who were sent to her would be required to stay for a minimum period. Sullivan wrote that:

> [T]here has always been a tacit understanding with Henrietta Street and other convents that no one would be sent to them unless they were to remain a year or eighteen months. This period is necessary to form good habits and to give any training. Apart from this, a constant coming and going among the inmates is unsettling.[146]

Probation Officer Sullivan emerges from the archives as a champion of the women. She regularly wrote to the Department of Justice to remind them that these women had been promised hope of eventual release, which promise had been dependent on their conduct. She functioned as the conscience of the Department, often writing to enquire about the possible release of particular women who had served the minimum periods. Despite a corpus of informally articulated notions regarding the proper disposal of women serving sentences of penal servitude, there were seemingly no official guidelines regarding how reprieved women would achieve eventual unconditional release. Therefore, just as the Eucharistic Congress of 1932 was used to petition for reprieve of the death sentence in certain cases, outlined in the previous chapter, so the Congress also provided motivation for Probation Officer Sullivan to petition for the release of women from religious-run institutions. Sullivan contacted the Department of Justice in relation to four women, Mary Moynihan, Deborah Sullivan, Elizabeth Hannon and Mary Anne Keane, who were at that time detained in various convents. In response to her appeal, Departmental Secretary Roche wrote, 'All four women are deserving of pity and help rather than of further punishment.'[147] The ad hoc nature of transfer to and release from religious-run institutions

[145] NAI Department of Justice 234/2016. Letter from Probation Officer Kathleen Sullivan to Minister for Justice, 27 June 1930.
[146] NAI Department of Justice 234/1744. Letter from Kathleen Sullivan, 10 February 1931.
[147] NAI Department of Justice 234/1744. Document prepared by Stephen Roche, 15 April 1932.

rendered such opportunistic petitioning from the Probation Officer necessary as there was no officially accepted 'end date' to the periods of confinement in the 'Homes', evident in the Roman Catholic chaplain's petition to have Jane O'Brien released from prison to Henrietta Street 'for the time being'.[148]

There is evidence of a benevolent bent in correspondence on the women within the sample. The Superioress of the convent to which Agnes McAdam was being transferred wrote that they would 'do everything possible to make her happy',[149] they mentioned the large grounds and farm at the convent and hoped that Agnes would be 'very happy and contented like all the other girls'.[150] The hope that she would be 'happy' was also expressed for Hannah O'Leary, when she was accepted by the institution in Cork.[151] However the restrictions on liberty, even for women like Kate Owens who went to institutions to perform paid work, were limiting, demonstrated in the comment that Owens would be 'free to go out if this fits in with her duties & her wishes.'[152]

The inevitable religiosity of confinement in these institutions is also expressed by correspondence from St. Vincent's Magdalen laundry in Cork which stated that they hoped Hannah O'Leary would 'appreciate having daily Mass and visits to the Chapel.'[153] A report from Henrietta Street on the progress of Elizabeth Edwards illustrates the benevolent/punitive dichotomy of institutionalisation; the Probation Officer wrote that the 'Rev Mother said she would like her opinion to be expressed that the girl has now been sufficiently punished.'[154] This comment confirms that religious-run institutions were considered punishment for some women, but it also highlights the rehabilitative motivations harboured by some of the religious orders and congregations. A Department of Justice document which considered the fate of Mary Anne Keane, unwanted by family and deemed unsuitable for domestic work, suggested the rarity with which some women left the institutions:

[148] NAI Department of Justice 18/2737A. Letter, 8 July 1941.
[149] Underlining in original.
[150] NAI Department of Justice 18/9074A. Letter from Superioress, 13 August 1949.
[151] NAI Department of Justice 18/2770A. Card from St. Vincent's in Cork to Matron at Mountjoy Prison. undated.
[152] NAI Department of Justice 18/6678A. Letter, 16 March 1949.
[153] NAI Department of Justice 18/2770A. Card from St. Vincent's in Cork to Matron at Mountjoy Prison, undated.
[154] NAI Department of Justice 18/885A. Report by Chief Wardress Watters, 14 September 1938.

> Going back as far as 1928 I can trace only one case in which a convict released on licence to a 'Home' was afterwards allowed to leave the 'Home' and take up a situation outside. In the other cases the women were sent to other Homes or Convents as domestic servants, etc.[155]

This illustrates the difficulty of leaving the network of religious-run institutions entirely, as demonstrated by the paths of Mary Moynihan, Deborah Sullivan and Kate Owens who found paid employment in religious-run institutions. The attitude of the Sacred Heart Home in Roscommon, which unsuccessfully undertook to effect reconciliation between Mary Anne Keane and her husband, speaks volumes on the attitude held by some towards women in this sample, particularly perhaps those women convicted of infanticide:

> Why cannot she remain with the nuns there, and try to be happy under the circumstances. She should be grateful to have escaped execution and now try to make reparations to God for her dreadful deed.[156]

Conclusion

This chapter has investigated the post-commutation outcomes for reprieved women within the sample. Reprieved women spent less time in prison than reprieved men. However, this comparison alone is misleading. For example, once cases of infanticide are disaggregated, there is less disparity between the periods spent in prison for reprieved women and men. Infanticides were treated as a distinct cohort, evidenced in the 'working rule' which suggested that a period of two years in prison was appropriate in these cases.

The petitions of reprieved women were also examined. Petitions afforded women an opportunity to present their case for release from prison. The rationales clustered around how 'needed' women were in their family home, their successful rehabilitation within prison, or attempts by the women to locate the blame elsewhere. Women therefore crafted narratives designed to secure their release. Although these petitions cannot be read uncritically, they also provide some of the few documents within the archives written by the women themselves. In this light, petitions illustrate the position of the condemned women as part of broader family structures, often locating the women in caring roles. The

[155] NAI Department of Justice 18/3540. 20 May 1936.
[156] NAI Department of Justice 18/3540. Letter from Sacred Heart Home, Roscommon, to Probation Officer O'Brien, 23 July 1936.

petitions also reveal the strain of imprisonment, through often emotionally revealing statements made by the women on their physical and mental health. Further, the petitions demonstrate sparks of resistance and anger, which all serve to acknowledge the lived experience of imprisonment and confinement, and the subjectivities of the reprieved women.

These petitions often requested unconditional release to family members. However, the chapter demonstrated that unconditional release was not considered a proper outcome for many women. Agency, the ability to call on family support and offer plans for the future were all essential in securing unconditional release. Alternatively, for women who could not avail of these resources, conditional release to a religious-run institution was more likely.

The research presented herein has therefore argued that any assumptions about leniency should be re-examined in light of the periods of time reprieved women spent coercively confined in semi-penal sites beyond the official criminal justice system. Table 7.6, on page 262 below, demonstrates the periods spent both in prison and in religious-run institutions by the 21 reprieved women. When the use of semi-penal sites is included, effective sentence length becomes considerably longer. Analysis of the confinement of reprieved women in Ireland therefore supports the coercive confinement thesis proposed by Eoin O'Sullivan and Ian O'Donnell.[157] Anette Ballinger, writing in an English context, has referenced the 'life after punishment' experienced by reprieved women who were confined in semi-penal sites; however, it is suggested herein that 'punishment' did not end at the prison door for such women.[158]

Whether through release to a woman's family or release to a 'Home', prison was generally viewed as an inappropriate environment for women throughout the sample period. For example, the Department of Justice took some efforts to empty the female convicts from the prisons in this period. Christina Quinlan notes that high rates of female emigration and the nature of Ireland's theocratic State were behind the low numbers of women in prison in

[157] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).
[158] Anette Ballinger, 'Feminist Research, State Power and Executed Women: The Case of Louie Calvert', in Stephen Farrall, Mike Hough, Shadd Maruna and Richard Sparks, eds, *Escape Routes: Contemporary Perspectives on Life after Punishment* (Routledge/Cavendish 2011).

this period.[159] This theocratic State, evident in the transcarceration of women from prison to religious-run institutions, contributed to the fall in the rates of women's imprisonment post-1922. The reprieved women were viewed as more responsive to an approach grounded in moralism and religious-instruction. This was justified by recourse to women's supposed mental inferiority, or their sinfulness, which were often understood as interchangeable. For agentic women, their crime was more likely to be viewed as a 'wrongdoing', more in the nature of male crime. In this way the women were classified as either sinner or criminal.

The punishment of women according to perceived immorality is evident in the differential discourses on women convicted of infanticide in contrast to those women who killed adults. The choice of institution also demonstrated a demarcation and gradation of punishment based on sinfulness. Women convicted of infanticide were also more likely to be discursively constructed as pathologised, which further reinforced decisions to confine such women in semi-penal sites. For example, Elizabeth Hannon and Margaret Finn, 30 and 25 at conviction respectively, had both previously worked as domestic servants. Both women were convicted of infanticide and were conditionally discharged from prison to religious-run institutions, where both women eventually died. The rationale for their prolonged confinement was grounded in a pathologised and paternalistic discourse that neither could survive on their own. Despite conflicting accounts, the regimes in these semi-penal sites of confinement, the religious-run institutions, evince a punitive and moralistic environment in which women who had given birth to illegitimate infants were viewed as less amenable to rehabilitation than 'ordinary decent criminals'. The process of transfer to and release from these institutions was entirely informal. While some recommendations existed, decision-making existed at an ad hoc level, which often saw certain women remain in detention for lengthy periods of time.

In light of the troubling nature of the practice of 'leniency', it is argued that the mercy extended to reprieved women, understood as the shorter imprisonment periods served by some women, could equally be expressed as a manifestation of paternalism.

[159] Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011).

Table 7.6: Time Spent by Reprieved Women in Prison and Religious-Run Institutions					
Name	**Convicted**	**Released Prison**	**Time Spent in Prison**	**Released Institution**	**Time Spent in Institution**
Hannah Flynn	27 Feb 1924	23 Oct 1942	18yrs 7mths	Approx. 30 years later	Approx. 30 years
Mary Moynihan	12 Dec 1924	18 July 1930	5yrs 7mths	Summer 1932	Approx. 2yrs
Hannah O'Leary	30 June 1925	18 Sept 1942	17yrs 2mths	Unknown	
Elizabeth Doran	3 June 1926	Transferred to psychiatric hospital 24 July 1926, released 7 May 1931			
Elizabeth Hannon	12 Dec 1927	17 July 1930	2yrs 7mths	Died in institution approx. 30 years later	
Mary Kiernan	28 Oct 1926	30 April 1927	6mths	N/A	N/A
Mary Anne Keane	10 June 1929	4 Nov 1930	1yrs 4mths	Unknown, still there in July 1936	
Deborah Sullivan	13 June 1929	2 Nov 1929	4mths	Dec 1932	3yrs 1mth
Catherine Aherne	25 June 1929	21 June 1933 to family	3yrs 11mths	N/A	
Annie Walsh (1929)	21 June 1929	25 Jan 1936 on licence	6yrs 7mths	N/A	
Christina Russell	27 Nov 1930	19 Mar 1934 on licence	3yrs 3mths	N/A	
Margaret Finn	3 Mar 1931	3 Oct 1933	2yrs 7mths	Died there on unknown date, still there in 1935	
Jane O'Brien	8 June 1932	21 July 1941	9yrs 1mth	Unknown	
Elizabeth Edwards	28 Mar 1935	6 Sept 1937	2yrs 5mths	Dec 1938	1yr 3mths
Rose Edwards	28 Mar 1935	1 Dec 1936 to family	1yr 8mths	N/A	
Mary Somerville	15 Nov 1938	23 Dec 1940	2yrs 1mth	14 Feb 1941	2mths
Kate Owens	22 Nov 1943	2 May 1949	5yrs 5mths	N/A	
Agnes McAdam	15 Feb 1946	30 Sept 1949	3yrs 7mths	Unknown	
Mary Agnes Bernadette Daly	29 April 1949	23 Nov 1953 on licence	4yrs 8mths	N/A	
Frances Cox	21 Nov 1949	21 Mar 1957 on licence	7yrs 4mths	N/A	
Mamie Cadden	1 Nov 1956	Transferred to psychiatric hospital 7 Aug 1958 where she died 20 April 1959			

Chapter Eight

Pathology

Introduction

Mad, bad or sad are frequent tropes used in discussions of women who kill. Chapter One reviewed how offending women have been explained using psychological theories. This tendency has been viewed as diminishing women's agency and reducing them to irrationality and emotion. The pathologisation of offending women does not involve the blanket psychologising of this cohort however. Rather, explanations grounded in pathology are extended differentially according to a number of variables including a woman's class.[1] The concept of discursively created subjects, such as 'the Madwoman', and the symbolic weight of meaning associated with discourses of pathology, means that this is a crucial means of interrogating the sample of 25 women.

This chapter investigates the extent to which, and the manner in which, the death-sentenced women within the sample were pathologised. The chapter opens with an analysis of the cases of Elizabeth Doran and Mamie Cadden, both of whom were certified as insane post-conviction and were transferred to the Central Criminal Lunatic Asylum.[2] This analysis probes the stated justifications for these diagnoses and considers the behaviour considered 'insane' in both cases. The case of Mary Agnes Bernadette Daly is also explored as one in which discourses of pathology were constructed along stereotypically gendered and class-based lines; Daly was pathologised in a signally different manner from other women in the sample.

The chapter also identifies how judgements on insanity were often informally related to hereditary markers; any history of insanity or abnormality within a condemned woman's extended family could be incorporated into an assessment of her character.

The chapter also explores the theme of pathology through its place in the legal infrastructure of the criminal trial. Due to the nature of the research herein, namely, the exploration of discourses on women sentenced to death, all those cases in which the

[1] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990).
[2] Under the Central Criminal Lunatic Asylum (Ireland) Act 1845.

defendants were judged not fit to plead, or were found guilty but insane by way of special verdict, are beyond the scope of this thesis.[3] Therefore, by virtue of their inclusion within the current sample, none of the cases herein met the insanity threshold.[4]

Although none of the women herein met this legal standard, counsel for some did attempt the defence. However, the 25 women within the sample could not be discursively produced as insane subjects, and substitute discourses of sub-psychiatry were instead deployed,[5] both during the trial and post-conviction, to minimise the perceived agency of the women. In these cases, pathology could not be used legally to escape criminal liability, but it was used frequently to justify greater leniency post-conviction.

These sub-psychiatric discourses were evident throughout many of the trials; the use of narratives steeped in the language of pathology was common, and innuendo was used to imply that women had been in a disordered mental state when the murder was committed. Much of this innuendo was associated with the branding of the women as of 'low mentality', an assumed catch-all diagnosis made variously by counsel, Prison Medical Officers and Trial Judges, which facilitated the extension of mercy. This substitute for a legal defence of insanity was effective in securing leniency. The association of female biology and insanity is also investigated in the chapter, in the cataclysm of birth and the subsequent reduction of a woman's agency in cases of infanticide. In these cases also, the assumption of 'low mentality' was frequently made, linking sexuality, imbecility and weak-mindedness. As demonstrated in the previous chapter, these discourses also justified the longer-term detention of women in semi-penal sites.

Throughout the archival documents produced by Prison Medical Officers, doctors and psychiatrists, it should be remembered that diagnoses and observations were made from an exclusively male experience and that the judgements on women were socially, historically

[3] From research on single women prosecuted for either murder of an infant, manslaughter or concealment of birth, Rattigan noted that from 1922 until 1950, only three single women were found insane and unfit to plead, see Clíona Rattigan, '"Half Mad at the Time": Unmarried Mothers and Infanticide in Ireland, 1922-1950', in Catherine Cox and Maria Luddy, eds, *Cultures of Care in Irish Medical History, 1750-1970* (Palgrave Macmillan 2010).

[4] *R v M'Naghten* (1843) Cl & F 200. The formulation of words stipulated that at the time of committing the act, the accused must be labouring under a defect of reason caused by a disease of the mind, and this defect of reason must have meant that the defendant was not aware of what they were doing, or that they were not aware that it was wrong. Finally, there had to be a causal link between the defect of reason and the act committed.

[5] Worrall uses this terminology, Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990).

and culturally contingent. Áine McCarthy has noted, that 'the history of women's experience of the asylums can be read only through the male medical discourse';[6] the paper trail left by doctors, superintendents, and professionals analysed herein is a male discourse, created by men with the intention of understanding, explaining and treating women.

Certified Insane Post-Conviction

Elizabeth Doran

Elizabeth Doran was convicted of infanticide on 3 June 1926; on 24 July 1926 she was certified as insane and transferred from prison to the Central Criminal Lunatic Asylum at Dundrum (hereinafter 'Dundrum').[7] Doran had given birth to the infant in a County Home; on her release a staff member had accompanied her to the train station and put her on the train. Doran had killed the infant following this journey, as she walked home from the station:

> The child was born at Rathdrum. I came on the train to Tinahely. I got out there and watched along the road. After a while I caught the child with my two hands by the throat and killed it. I there buried it in a sewer and came away.[8]

Doran's counsel did not attempt a defence based on insanity, although a doctor gave evidence that she 'was abnormal and of a low order of intelligence.'[9] However, following Doran's conviction, her behaviour in prison deteriorated:

> Some days ago this Prisoner became very noisy shouting day & night, beating the walls violently & recently has developed dirty habits. She was sane on committal & she suffers from delusional insanity.[10]

Doran's behaviour, although considered evidence of her insanity, was also judged to be 'probably curable';[11] she was transferred to Dundrum less than two months following her conviction.

---

[6] Áine McCarthy, 'Hearths, Bodies and Minds: Gender Ideology and Women's Committal to Enniscorthy Lunatic Asylum, 1916-1925', in Diane Urquhart and Alan Hayes, eds, *Irish Women's History* (Irish Academic Press 2004) at 118.
[7] NAI GPB/PEN/3/216; Department of Justice 234/1297.
[8] NAI Central Criminal Court (hereinafter 'CCC') Wicklow 1926 1C-90-28.
[9] 'Woman Sentenced to Death' *Irish Examiner* (4 June 1926).
[10] NAI Department of Justice 234/1297.

A report to the Inspector of Mental Hospitals, two years after Doran's committal, concluded that 'though free from delusions, [Doran] is both mentally and morally of a decidedly low type.'[12] The description of her as 'both mentally and morally' low was indicative of the role of discourses of moralism in the definition of insanity as well as the interplay of class; 'low' invokes allusions of morality as well as Doran's status as a member of the 'labouring class'. As Doran had given birth to an illegitimate infant, the judgements made about her morality pervaded judgements about her mental state; judgements about her morality had already been evident in Garda Reports, for example in the statement that she was 'very depraved'.[13]

While in Dundrum, Doran attempted suicide on a number of occasions. It was noted in one report that, 'She is actively suicidal, and has made several determined efforts to do away with herself, and states that she will persist in her attempts until discharged from here.'[14] During interviews with the doctor at Dundrum, Doran placed these suicide attempts in context, citing the anxiety attendant on committal to the hospital as the cause of her behaviour. Dr Kelly duly reported on 26 March 1931 that:

> She is extremely anxious to return to her home. She says that her former attempt at suicide were due to this anxiety. I think that if she were discharged on probation she would be able to get on fairly well at her home.[15]

Elizabeth Doran's contextualisation of her behaviour may have demonstrated sufficient understanding to appease fears about her future behaviour. Doran was duly released from Dundrum, aided by the persistent petitioning of her sons. Doran was conditionally discharged on 7 May 1931, following almost five years of detention. On her release, the Department of Justice requested that the local Garda submit quarterly reports on her behaviour. The resulting Garda Reports were universally positive:

> [Doran] has been kept under close observation but nothing has come to notice to show that it is unsafe to have her at large. She is enjoying good health and works daily as a charwoman for shop-keepers in Carnew. She is still residing

[11] ibid.
[12] NAI Department of Justice 234/1297. Letter to the Inspector, 21 March 1929.
[13] NAI GPB/PEN/3/216. Garda Report, 3 July 1926.
[14] NAI Department of Justice 234/1297. Letter to the Inspector, 21 March 1929.
[15] NAI Department of Justice 234/1297. Minute Sheet to Secretary of the Department of Health, 26 March 1931.

> with her three sons … is leading a regular life, is attending to her religious duties and is on friendly terms with her neighbours. She is seen and spoken to frequently by the Gardaí and her mental condition appears quite normal.[16]

In Doran's favour were her industriousness, her attendance to religious duties, and her good relations with persons in the area, all markers of good citizenship. On 2 November 1933, the final Garda Report on Doran reiterated that as all previous reports 'show her to be behaving normally, perhaps they might be discontinued.'[17] The informal nature of surveillance was also evident within one Garda Report which recorded that the Superintendent of Dundrum actually 'sees her daily going to and from work' and 'frequently engages in conversation with her and he has always found her to be perfectly normal in her manner.'[18]

The case of Elizabeth Doran demonstrates the instrumental value of family support in securing release from Dundrum. Without the petitioning from her sons, it is doubtful she would have been released when she was. Doran's sons were investigated to assess their suitability; initial fears, typified by the view expressed at trial that her family were 'deficient',[19] were later echoed by the Department of Justice. A Garda Report on Doran's sons outlined their employment status and earnings, which led the Department to conclude that 'conditions do not appear ideal.'[20] However, this was in opposition to the Garda view that 'they are of sober dispositions and are generally sensible, well conducted young men.'[21] Ultimately, it was Doran's family network, which promised care and concern, which facilitated her release; the Guards offered their view that Doran's sons were 'genuine' in their intentions, and that their petitioning was based on 'filial affection'.[22] Without the active support of her sons and the assessment of her sons as 'suitable' it is unlikely Doran would have been released from Dundrum to her home. As with women seeking release from prison or religious-run institutions, as noted in the previous chapter, issues of 'wantedness' were pivotal in decisions made about release.

[16] NAI Department of Justice 234/1297. Garda Report, 3 August 1932.
[17] NAI Department of Justice 234/1297. Letter from Garda Síochána to Department of Justice, 2 November 1933.
[18] NAI Department of Justice 234/1297. Garda Report, August 1931.
[19] 'Woman Sentenced to Death' *Irish Examiner* (4 June 1926).
[20] NAI Department of Justice 234/1297. Department of Justice document, 20 March 1931.
[21] NAI Department of Justice 234/1297. Garda Report on Thomas Doran, 12 March 1931.
[22] ibid.

Consideration of the behaviour which caused Doran to be certified as insane suggested that her aggression was a key factor. The opinion that she was suffering from 'delusional insanity' was reinforced by reference to her noisiness, the aggression she exhibited in her prison cell, and her uncleanliness. Alone, and without more detailed medical notes, these seem incapable of grounding such a finding. However, within the context of a gendered understanding of appropriate behaviour such failings may conceivably ground certification as insane. Doran's case also illustrates the importance of markers of working-class, feminine respectability; on her discharge, a powerful combination of work, religion and assimilation into the community allowed officials invested in the case to withdraw from surveillance.

Mamie Cadden

Mamie Cadden was convicted on 1 November 1956 for the murder of Helen O'Reilly. O'Reilly had died in Cadden's Dublin bed-sit while undergoing an illegal abortion performed by Cadden. Mamie Cadden spent approximately one year and ten months in Mountjoy Prison following her conviction before she was certified as insane and transferred to Dundrum on 7 August 1958; she died in this institution on 20 April 1959.[23] Cadden's high-profile, as an infamous Dublin abortionist, ensured that her transfer to Dundrum was reported briefly by the press, demonstrating the continued purchase of Cadden's name and reputation.[24]

Although, as in the case of Elizabeth Doran, Cadden's defence had not attempted to argue insanity, issues of pathology arose during the trial. For example, Cadden was branded as

[23] NAI Department of Justice 18/3562. Notification of Discharge, Removal, Death or Escape of a Person Admitted from Gaol as a Criminal Lunatic, 21 April 1959. Her mental condition at the time of her death was listed as arteriopathic dementia.

[24] 'Miss Cadden in Dundrum' *Sunday Independent* (9 November 1958); 'Prisoner Transferred' *Connaught Telegraph* (15 November 1958). Her death there was also reported, 'Miss Cadden Dies in Asylum' *Irish Press* (22 April 1959); 'Ex-Nurse Cadden Dead' *Irish Independent* (22 April 1959); 'Death of Nurse Cadden in Asylum', *Irish Times* (22 April 1959). In subsequent decades, Cadden became a popular figure in the Irish media. For example, Cadden has appeared in true crime works, see, Tom Reddy, *Murder Will Out: A Book of Irish Murder Cases* (Gill and Macmillan 1990); Terry Prone, *Irish Murders: Shocking True Stories* (Poolbeg 1992); Tom Reddy, 'The Body in Hume Street', in Kevin O'Connor, ed, *Thou Shalt Not Kill* (Gill and Macmillan 1995); David M Kiely, *Bloody Women* (Gill and Macmillan 1999). A book-length biography and account of her trials exists also, see Ray Kavanagh, *Mamie Cadden: Backstreet Abortionist* (Mercier 2005). The case has also been referenced by a number of sociological/historical works, see, Kenneth EL Deale, *Beyond Any Reasonable Doubt? A Book of Murder Trials* (Gill and Macmillan 1971); Hubert Butler, *Grandmother and Wolfe Tone* (Liliput 1990); Sandra McEvoy, 'Before Cadden: Abortion in Mid-Twentieth-Century Ireland' in Dermot Keogh, Finbarr O'Shea and Carmel Quinlan, eds, *Ireland in the 1950s: The Lost Decade* (Mercier 2004); Diarmaid Ferriter, *Occasions of Sin* (Profile 2009).

'mad' by her own counsel, who stated that although she was a 'mad, bad old woman', this was not enough on which to convict.[25] Prior to Cadden's trial, the Prison Medical Officer had also expressed some doubts about her mental state, requesting a consultant psychiatrist examine her, and concluding that 'it is a very difficult matter to arrive at a proper estimation of her mentality.'[26]

The discourses also shaped rationales for commutation, for example, from her solicitor:

> She is of an abnormal mentality and while it is not suggested that this amounts to the degree of insanity exempting her from criminal responsibility, it occasioned considerable thought and anxiety to her advisors as to whether she was legally fit to plead. It is suggested that this abnormal mentality deprives her of the normal appreciation of her moral and criminal responsibilities.[27]

Cadden's 'abnormal mentality' often manifested as aggressive behaviour and paranoia. Cadden's solicitor included her 'public outbursts from the dock' as typical examples of abnormality and stated that they presented 'a constant anxiety' to her legal team which had ultimately decided against putting her on the stand.[28] These outbursts included Cadden's words from the dock when sentenced to death: 'Well, I am not a Catholic. Take that now.'[29] Certainly many of Cadden's outbursts, including a letter she had sent to her landlord in 1956, were full of anger and abusive language:

> No Dirty 'Underground Communist' can do that. 'Irish Landlords' If he comes in here to throw me out, I will shoot him dead and also put the Butcher Knife to the Handle in his Pot Belly.[30]

These outbursts were often motivated by antipathy towards authority figures, and the Prison Medical Officer noted her 'especial animus against those who administer Justice and also Catholic clergymen.'[31]

[25] 'Murder Trial: Conclusion of State Case' *Irish Independent* (31 October 1956).
[26] NAI Department of Justice 18/3562. Prison Medical Officer, 29 August 1956.
[27] NAI Department of An Taoiseach S.16116. Telegram from Stanley A Siev, 4 January 1957.
[28] ibid.
[29] NAI Department of An Taoiseach S.16116. Trial Judge's Charge to the Jury.
[30] NAI Department of An Taoiseach .S16116. Letter to the Revenue Commissioners, 16 April 1956.
[31] NAI Department of Justice 18/3562. Memorandum, 1 January 1957.

One interpretation of Cadden's behaviour could situate it as resistance and the demonstration of agency.[32] Some of the judgements about her behaviour indicate that her opposition to the prison regime was viewed as indicative of unusual behaviour, such as the Prison Medical Officer's claim that 'She is also aggressive in manner – demanding all things which she considers are her "rights" here.'[33] The characterisation of her demands as 'aggressive' highlights again the importance of appropriately gendered behaviour which was evident in the case of Elizabeth Doran.

This disruptive behaviour in prison, and the deterioration of her condition, eventually led to Cadden's certification:

> She is deluded, has ideas of persecution and after a short while becomes rambling and incoherent in speech. She states that the Catholic chaplain entered her cell aimed a gun at her and threatened to kill her. She states she is in prison 'through the underhand working of the Catholics.' She becomes abusive and obscene in language when [describing] her persecutions. She is degraded in habits, defecates in her bed and on the floor and is violently resistive to necessary nursing attention. She has attacked members of the staff on several occasions.[34]

Cadden was therefore pathologised both implicitly and explicitly, before, during and after her trial. Despite concerns about Cadden's mental condition, considerable efforts were made to convict her of the capital charge, using the legal doctrine of constructive malice which compensated for her lack of the requisite *mens rea* for murder. Her conviction for murder is therefore perplexing and suggestive of the possibility that other, extra-legal factors motivated the prosecution. Cadden was a 'bad' woman and an incorrigible offender, having been convicted twice previously.[35] The death of Helen O'Reilly during an

[32] For example, Cadden's use of faeces in her cell could be located within a larger history of prison resistance, particularly as applied to political prisoners in Ireland and the use of dirty protests. However, it could be problematic to attribute active resistance to Cadden; this attribution could obscure her vulnerability, and represent an attempt to inject agency in a case in which there is insufficient information to make such a conclusion. Certainly, over the years, Cadden's handwriting became an illegible scrawl, evident in letters she sent shortly before her certification as insane.

[33] NAI Department of Justice 18/3562. Prison Medical Officer, 29 August 1956.

[34] NAI Department of Justice 18/3562. Medical Certificate.

[35] As noted in Chapter Four, Cadden had been convicted in 1939 of child abandonment, and in 1945 of attempting to procure a miscarriage. For these offences, she had spent 12 months and five years in prison respectively. Cadden was also 'known' to be continuing her work as an abortionist, and rumours about the death of another woman earlier in the decade ensured her reputation remained devalued. This was evident in

abortion procedure, and the particular Irish cultural revulsion for this practice, may have made Cadden's case one in which punishment had to be seen to be exacted.[36] For example, one letter writer described abortion as 'abhorrent', while also advocating commutation.[37] The 'monsterisation' of Cadden may therefore have justified a harsher criminal justice response and acted as an expressive punishment.[38] Therefore, despite doubts about Cadden's mental competence, she was endowed with agency because her status as an abortionist rendered her abject.

Gendering Insanity: The Case of Mary Agnes Bernadette Daly

The case of Mary Agnes Bernadette Daly demonstrates how pathological discourses could be gendered in recognisably 'female' ways. Daly was convicted on 29 April 1949 for the murder of Mary Gibbons. Daly had attacked Gibbons with a hammer, while Gibbons prayed in a Dublin church. Gibbons was unknown to Daly, but it was suggested that the attack resulted from Daly's attempt to steal Gibbons's bags. Daly was married, and had a young infant; the family were facing eviction from their flat and were in financial difficulties.

The strongly gendered manner in which Daly was pathologised was possible because Daly had been 'read' as typically feminine. Pathological explanations of women's offending are

---

the official memos, for example Cadden was described as 'of bad character' in a Department of Justice memo. The Trial Judge in her 1945 trial had stated that, 'Of all the persons, men and women who have stood in the dock before me during my eighteen years on the Bench, I think this woman is easily one of the worst.' Elsewhere it is noted that Cadden 'is undoubtedly a really "bad lot"'. Compounding this, the Prison Medical Officer's diagnosis of her as 'amoral' compounded the sense of Cadden as truly bad. See, NAI Department of Justice 18/3562.

[36] Cadden was created as both iconic and as monster through her mythic construction as the 'infamous Dublin abortionist'. The taboo of abortion in Ireland at this time ensured her notoriety. Social commentary was notably absent from the contemporaneous accounts of Cadden's trial; it was only in later decades that writers tackled more contentious issues regarding reproductive health in Ireland and the stigma of illegitimacy. Indeed, newspaper reporting throughout the case referred to the abortion procedure as an 'illegal operation'. Finola Kennedy noted that 'Abortion was a term rarely mentioned in public in Ireland until the 1980s', see Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001) at 38.

[37] A letter urging commutation of sentence from legal scholar John Kelly noted that 'I can imagine that in Miss Cadden's case, arising as it did out of a crime which Irish people rightly find abhorrent, not much public sympathy for her exists'. NAI Department of Justice 18/3562. Letter from John Kelly, Pembroke College Oxford, undated.

[38] Subsequent accounts suggest there was significant animosity towards Cadden, with Reddy writing that crowds yelled 'Hang her', see Tom Reddy, *Murder Will Out: A Book of Irish Murder Cases* (Gill and Macmillan 1990). Ciaran Byrne wrote in a 2011 newspaper piece, that 'outside a mob chanted: "Hang the bitch."' See, Ciaran Byrne, 'The Year a Hangman was Made Redundant' *Irish Independent* (1 October 2011). Contemporaneous newspaper reporting recorded that significant crowds attended trial and verdict, and that some women in the public dock sobbed when sentence was passed, see 'Death Sentence is Imposed on Miss Cadden' *Irish Press* (2 November 1956); 'Miss Cadden Found Guilty of Mrs O'Reilly's Murder' *Irish Times* (2 November 1956).

inevitably interconnected with class,[39] and in Daly's case, her construction as respectable and her adherence to feminine ideals of frailty allowed a pathologised construction of her that was unique among the sample. Judgements about Daly's class are evidenced by a Psychiatric Report which stated that she was from 'a middle class family in the West of Ireland'.[40]

In tandem with Daly's more middle-class background, she was consistently constructed as typically feminine throughout her trial.[41] Despite the nature of the attack, Daly was constructed as feminine, as physically weak and mentally frail. The defence narrative suggested that Daly had been a victim who acted in self-defence after Mary Gibbons attacked her.[42] During the trial, defence counsel asked the State Pathologist to examine Daly's hands to confirm how weak they were and how little gripping power they possessed.[43] Defence counsel also emphasised Daly's petite build. This narrative was also adopted in a later true crime account of the case, which stated that Mary Gibbons was taller, strong for her age, and 'well-built', while Daly was only five foot two inches in height, 'small and lightly made.'[44] Daly was also presented as pious, and she gave evidence that when she had occasion to leave her home she would pay visits to the church, she claimed also that when she was attacked by Gibbons she had been kneeling to pray.[45]

When Daly's possible release from prison was reviewed by the Department for Justice it was the depiction of Daly as emotionally frail which dominated. The memorandum prepared for dissemination proposed that Daly had attacked Gibbons in a panic without premeditation or intention to injure.[46] Daly's defence counsel, who had been appointed to

[39] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990).
[40] NAI Department of Justice 170/7622. Psychiatric Report from St. Patrick's Hospital, 29 October 1951.
[41] As referenced in Chapter Four, Daly had trained as a state registered nurse in England, a qualification which immediately differentiated her from the majority of Irish nurses who instead were offered only the qualification of state enrolled nurse. Markers such as these highlight Daly's 'difference' in class. See, NAI Department of Justice 170/7622. Psychiatric Report, 29 October 1951. For qualitative research into the experiences of Irish nurses working in Britain from the 1940s and 1950s, see Louise Ryan (2007) '"Who do you think you are?" Irish Nurses Encountering Ethnicity and Constructing Identity in Britain', *Ethnic and Racial Studies*, 30(3), 416-438.
[42] NAI CCC Unknown Counties 1949 1D-50-42. Deposition of Mary Agnes Bernadette Daly, 10 August 1948
[43] 'Second Day of Murder Trial' *Irish Times* (10 November 1948).
[44] Stephen Wade, *Escapes from the Noose* (Amberley 2010) at 103.
[45] NAI CCC Unknown Counties 1949 1D-50-42. Deposition of Mary Agnes Bernadette Daly, 10 August 1948.
[46] NAI Department of An Taoiseach S.14430B. Memorandum, 19 December 1953.

the judiciary since his work on the trial, confided to the Department of Justice that the verdict of murder was the harshest he had ever encountered.[47]

Daly's background, and the interpretation of her as feminine, with the endowments of frailty and vulnerability this afforded, shaped the discourses of pathology in her case. Gendered pathologisation is evident in the terminology of 'hysteria' for women, and in the coded references to nervous disorders.[48] This was evident in Daly' case, for example, in her diagnosis as 'an hysterical psychopath',[49] and as an 'emotionally unstable person, impulsive and lacking in fore-sight and self-control.'[50]

When assessing her fitness to plead, the Prison Medical Officer reported:

> Whilst I do not consider her to be suffering from any gross mental derangement, she is in my view, a highly strung person, and from a study of the Depositions and her own account of her life since early this year, I consider she has been living for some months past under continuous mental strain.[51]

Again, the use of the terminology 'highly strung' and 'nervous strain' are pathological descriptors which are coded female. These terms are used on a number of occasions to describe Daly.[52] Correspondence from members of the public also provided gendered and sympathetic readings of the case. One letter writer argued that 'it is certain that the assault was unpremeditated, & that there were strong causes for loss of temper & an unbalanced state of mind in the young woman's condition.'[53]

When Daly's release from prison was considered, further pathological explanations were revealed. It is reported that when she was committed to prison, her 'behaviour was not normal.' It was apparently not until 1951 that Daly was judged to have 'recovered her stability'. Even at this point, a reputable psychiatrist considered her 'emotionally unstable,

---

[47] ibid.
[48] Elaine Showalter, *The Female Malady: Women, Madness and English Culture, 1830-1980* (Virago 1987); Barbara Ehrenreich and Deirdre English, *For Her Own Good: 150 Years of the Experts' Advice to Women* (Anchor Books 1989).
[49] NAI Department of Justice 170/7622. Psychiatric Report from St. Patrick's Hospital, 29 October 1951.
[50] ibid.
[51] NAI CCC Unknown Counties 1949 1D-50-42. Prison Medical Officer, 3 November 1948.
[52] NAI PRES/1/P4283. Letter, 1 May 1949; Department of An Taoiseach S.14430A. Memorandum, 2 May 1949.
[53] NAI PRES/1/P4283. Letter from Dorothea M Dixon, Dublin, 1 May 1949.

impulsive and lacking in foresight and self control' although he did not consider her to be insane.[54] In October 1953, in preparation for her release, the Prison Medical Officer gave his opinion that Daly had 'learnt by now that she must exercise self-restraint in her own interest' and it was the general opinion of all that continued time spent in prison could only undo the improvements made to Daly's behaviour.[55]

Daly was therefore the beneficiary of discourses of pathology which were constructed around her class and her appropriate femininity. Her offence, one of only two within the entire sample in which capitally convicted women had murdered strangers, as well as the framing of the murder as one committed for personal gain, meant that Daly's actions were atypical, and her crime an 'unusual' one. However, the introduction of pathologised explanations rendered the inexplicable explicable, and rendered Daly intelligible within the limits of femininity. The pathologisation of Daly in this manner also served to create a sympathetic figure, and strip away her agency, facilitating the extension of mercy.

Hereditary Insanity: The Importance of the Family

Insanity was understood as hereditary, demonstrated in the frequent enquiries into the extended family and antecedents of death-sentenced women. For example, Mamie Cadden's mental state was explored as a form of hereditary madness; in a comprehensive Garda Report, Cadden's childhood and family were examined for clues to her character, the Report revealed that the Gardaí had found 'no history of insanity in the Cadden family, but there is a first cousin of Miss Cadden's… a patient in Castlebar Mental Hospital for the past ten years'.[56] That such relatives could be located was hardly surprising, by the mid-1950s Ireland was experiencing its peak of institutionalisation, which was particularly pronounced in the West of Ireland.[57] Cadden was also reported to have been a 'highly strung and strong-willed' teenager who 'never agreed with her family'.[58] The label of mad was often applied to women who transgressed social conventions; and there is some

[54] NAI Department of An Taoiseach S.14430B. Memorandum, 19 December 1953.
[55] ibid.
[56] NAI Department of An Taoiseach S.16116. Superintendent Wymes' summary of the facts and evidence, 13 November 1956.
[57] Damien Brennan, *Irish Insanity, 1800-2000* (Routledge 2014); Ian O'Donnell and Eoin O'Sullivan, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).
[58] NAI Department of An Taoiseach S.16116. Superintendent Wymes' summary of the facts and evidence, 13 November 1956.

evidence of the function of the asylum as a disposal for deviant young women.[59] This information on Cadden's temperament as a teenager was therefore relevant to the construction of her as abnormal later in life.

This use of networks of local knowledge as a means of constructing identity is evident throughout Cadden's case. The importance of her family connection and reputation was pertinent within a schema of identity which relied strongly on antecedents and notions of heredity. In the Garda Report, Cadden's brother was described:

> He is regarded as well-to-do and is respectable and law-abiding. His wife is a National Teacher in Rathkeale National School and he has two sons, one of whom is a medical student in U.C.D.[60]

Other death-sentenced women within the sample were also understood within this network of family and hereditary madness. Mary Anne Keane's family were described as having 'a very bad mental history.'[61] The Garda Report revealed that:

> It is known that an aunt and an uncle of Mary Anne Keane died in an asylum, and that members of her own family (sister and brother) were also committed. It is believed that accused was an inmate of an asylum at some time or other, but this cannot be definitely stated at the moment. Further enquiry on this point is being pursued. Accused was always looked upon as being more or less simple.[62]

In the case of Agnes McAdam too, letter writers sought to highlight the unusual temperament of both Agnes McAdam and her family. Her solicitor, although admitting that her abnormality fell short of insanity, stated that 'Miss McAdam is definitely not a normal person, and for that matter no member of her family is, though legally neither she nor they could be adjudged insane'.[63] Tessie McAdam, the sister-in-law of Agnes, had actually become a target of suspicion during the trial. Under cross-examination, a Guard made

[59] See for example Áine McCarthy, 'Hearths, Bodies and Minds: Gender Ideology and Women's Committal to Enniscorthy Lunatic Asylum, 1916-1925', in Diane Urquhart and Alan Hayes, eds, *Irish Women's History* (Irish Academic Press 2004).
[60] NAI Department of An Taoiseach S.16116. Superintendent Wymes' summary of the facts and evidence, 13 November 1956.
[61] NAI Department of Justice 18/3540. 12 June 1929.
[62] NAI Department of Justice 18/3540. 24 May 1929.
[63] NAI Department of Justice 18/9074A. Letter from James McGeough, 8 April 1946.

revealing comments about Tessie, 'From my observation I did come to the conclusion that she was not of normal mental capacity.' He went on to clarify, 'That she was not of normal intelligence, I will put it that way.'[64] This led the defence to apply to the Trial Judge that Tessie should have been considered a suspect, something which the Trial Judge dismissed in his charge to the jury. A local Senator wrote that Agnes's maternal grandfather had died in a mental hospital, and concluded that there 'is some want in the mind of Agnes'.[65] Another letter writer said that he was 'creditably informed that there is a streak of insanity in the family'.[66] These letters demonstrate not only the positioning of the individual within the umbrella designation of family as a means of creating identity, but also the powerful networks of knowledge which existed locally. The construction of Agnes McAdam as 'abnormal' was aided by a perception of her, held even by those letter writers who did not know her, as unusual, and this perception was affirmed by reference to local knowledge.

The family history of Kate Owens was also investigated for possible connections to madness, but it was reported that 'There is no insanity or other hereditary disease in the family as far as is known.'[67] Enquiries into the family of Mary Agnes Bernadette Daly were more fortunate in finding some abnormality, reporting that one uncle of Daly's:

> [U]sed to go about begging alms. He slept in out-houses, and wore two or three overcoats. He used to visit Catholic Churches and pray for considerable periods. He was religiously 'touched'. When he died it was found that he had £400 in his possession.[68]

The Garda Report also noted the case of one first cousin who was admitted to an asylum after an attempt to slit his throat with a razor. However, her immediate family, and the entirety of her maternal relatives were 'free from insanity'.[69]

[64] NAI Court of Criminal Appeal (hereinafter 'CCA') 16/1946. Evidence of Timothy Cronin.
[65] NAI Department of Justice 18/9074A. Letter from Senator Seamus Johnston, 8 April 1946.
[66] NAI Department of Justice 18/9074A. Letter from Eugene O'Callaghan, 8 April 1946.
[67] Department of An Taoiseach S.13383A. Memorandum.
[68] NAI Department of Justice 170/7622. Garda Report, 15 November 1948.
[69] ibid.

Insanity in the Criminal Trial: Failing to Meet the Insanity Threshold

Special Verdict

The difficulty of reaching the insanity threshold is evident in many of the cases herein; the M'Naghten rules created an intimidating obstacle to surmount.[70] This difficulty became apparent in the problems experienced by juries of ascertaining whether this standard had been met, navigating these legal requirements proved problematic for some juries.

The jury in the trial of Mary Kiernan initially returned with a verdict that Kiernan was 'guilty but not responsible for her actions.' Justice O'Byrne had advised the jury that if they believed Kiernan did not know what she was doing at the time she killed the infant they must find her guilty but insane. The jury could not make this finding and instead found Kiernan guilty of murder. The jury in the trial of Deborah Sullivan experienced a similar issue and returned from deliberations to seek guidance on the issue of the state of mind of the accused; Justice O'Byrne advised the jury that Sullivan's counsel had not adequately established the insanity defence.[71] The failure of insanity defences was evident elsewhere, for example in the memorandum on the case of Kate Owens it was stated that 'The defence relied on the grounds that the accused was insane but the jury rejected this plea.'[72]

The comments of Trial Judges privately in a number of cases also made reference to the failure of defence counsel to present an insanity defence. The Trial Judge in the case of Frances Cox noted that her counsel had not attempted a defence of insanity, but had instead sought to rely on the facts to prove that she had not committed the act.[73] Defence counsel in the trial of Hannah Flynn petitioned the Department of Justice following her conviction claiming that the verdict should have been 'Guilty but Insane' and citing the 'well nigh impossible' reverse burden of proof needed to secure this verdict.[74] Flynn's solicitor also

[70] M'Naghten Rules established in *R v M'Naghten* (1843) Cl & F 200. Although an Irish court held in 1936 (*Attorney General v O'Brien* [1936] IR 263) that the M'Naghten rules did not encompass an exhaustive definition of insanity, including its failure to embrace 'irresistible impulse', in which the accused knew the nature and quality of the act but could not refrain from committing it, this was not definitively adopted into Irish law until 1974 in *Doyle v Wicklow County Council* [1974] IR 55. Further, diminished responsibility was only introduced into Irish law in the Criminal Law (Insanity) Act 2006.
[71] NAI Department of An Taoiseach S.5886. Memorandum, 17 June 1929.
[72] NAI Department of An Taoiseach S.13383B. Memorandum, 12 April 1949.
[73] NAI Department of Justice 18/11757. Handwritten note, undated. See also, Letter from Justice Dixon, 21 December 1949.
[74] NAI Department of Justice 18/2769A. Memorandum, 1 March 1924.

wrote on this point stating that 'although the condemned woman was not found to be insane within the very narrow legal definition of insanity, there is no doubt that she is, in the popular meaning of the word, insane.'[75]

Therefore, although all the women in the sample were assessed as fit to plead, and were found guilty, the use of these sub-psychiatric discourses throughout sought to minimise their agency. The use of these pathologised discourses can be broadly divided into two categories: discourses centring on intellectual capacity and discourses which understood childbirth as a catastrophic event which provoked disturbances in the mind. These two strands are invariably interlinked as the label of 'weak-minded' or 'low mentality' was disproportionately applied to infanticide cases. As Clíona Rattigan found, to be unmarried and pregnant was tantamount to a diagnoses of low mentality in the eyes of some.[76] The use of these sub-psychiatric discourses is explored in the following sections.

Sub-Psychiatric Discourses: Low Mentality

The use of sub-psychiatric discourses is evident through the cases. Anne Worrall has noted that women who do not meet the insanity threshold can be subject to sub-psychiatric diagnoses. She also found that the acceptance of such definitions varied according to class and demeanour.[77]

Within the sample, these discourses were used to compensate for the failure to meet the legal threshold for insanity, and to facilitate the extension of mercy to women. One strand of these sub-psychiatric discourses was the branding of women as of 'low mentality' and below average intelligence. The suggestion that a woman was below average intelligence allowed the removal of agency from her actions and justified the official extension of mercy through commutation of the death sentence. For example, the rationales for mercy are listed in the case of Elizabeth Hannon including the view that 'The condemned woman's mentality is below average.'[78]

[75] NAI Department of Justice 18/2769A. Letter from Ernest W Proud, 29 February 1924.
[76] Clíona Rattigan, '*What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012).
[77] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990).
[78] NAI Department of Justice 234/2016. 15 December 1927.

The class dimension may have influenced the classification of many women within the sample as of low mentality. Hannah Flynn was recommended to mercy by the jury 'on account of her low mentality.'[79] Flynn's solicitor also petitioned for her reprieve based on the effect of the sentence on a 'mind already weak', while her mentality was also stated to be defective.[80] Flynn's siblings were also classified in this manner,[81] and were reported to be 'simple' and 'not of a very high mental calibre.'[82] Hannah O'Leary, and her family, was also judged to be abnormal. In a petition on behalf of Hannah and Con O'Leary it was stated that:

> [T]he said Cornelius O'Leary and the said Hannah O'Leary are people not to be judged by ordinary standards and are of a low form of mentality, and during their lives have at various times exhibited indications of mental disorder, that they have lived a life apart from the people and have never shared to any large degree in the ordinary habits and customs of the people of their position. That it is generally believed that a medical examination by mental experts would reveal the condition referred to herein.[83]

The Prison Medical Officer concluded that Hannah was:

> [A] dull, stupid-looking woman and from close personal observation and questioning of her, I would describe this prisoner as a person of more or less defective reasoning power, and I would add that she might, under a state of excitement, lose sufficient power of control to govern her own actions.[84]

Sub-psychiatric discourses did not affect the outcome of the criminal trial and had a greater impact post-conviction. The death-sentenced women were each certified as of sound mind and fit to plead. The Medical Officer of Grangegorman Mental Hospital, for example, found Kate Owens to be 'weak minded' but also 'of sound mind and understanding; that she fully appreciates the difference between right and wrong, and that she is capable of understanding the charge against her and of giving instruction for her defence.'[85] Annie

[79] NAI City Commission Kerry, 5 February 1924.
[80] NAI Department of Justice 18/2769A.
[81] NAI Department of Justice 18/2769A. Garda Report, 27 July 1942.
[82] NAI Department of Justice 18/2769A. Garda Report, 8 February 1939.
[83] NAI Department of Justice 18/2770. Petition, 25 July 1925.
[84] NAI Department of Justice 18/2770. Letter from General Prisons Board, 17 July 1925.
[85] NAI Department of An Taoiseach S.13383A. Memorandum.

Walsh (1925) was also viewed as possessing a below average intelligence, however she was also deemed fit to plead, and the judgement of her as 'a low mental type'[86] did not prevent her execution. A civil servant from the Department of Justice concurred with this view of Walsh following a meeting with her:

> Her mental faculties I would rate as much below the average and though I have no reason to think she was incapable of controlling her actions, I am inclined to the opinion… that she does not seem to realise the responsibilities of life.[87]

Prior to conviction, women, as legal subjects, were presumed sane, and were certified as such by medical experts. Post-conviction, informal judgements on their mental state were utilised to extend leniency, or to exert coercive control through discourses of infantilisation. The labelling of many women as of low mentality negated the reality that many of these women had held positions of employment prior to arrest, and had earned their own living.

The particular mental frailty of some women was articulated as a concern and a rationale for swift commutation of the death sentence. Mary Kiernan's death sentence was commuted on the recommendation of the Trial Judge, Justice O'Byrne, who expressed his concerns regarding the effect of the sentence on her mental and physical health:

> Mr Justice O'Byrne 'entirely concurs' in the jury's recommendation and states that 'it is a case in which the strain of a capital sentence, if continued for any length of time, may have serious results on the physical and mental health of the prisoner.'[88]

Justice O'Byrne articulated the same rationale in the case of Deborah Sullivan:

> May I suggest that this is a case in which the mental condition of the accused, who is quite a young girl, may be seriously prejudiced by her remaining for any considerable time under sentence of death.[89]

[86] NAI Department of Justice H1004/275.
[87] NAI Department of Justice, H1004/275. Letter, 17 July 1925.
[88] NAI Department of An Taoiseach S.5195. Memorandum, 4 November 1926.
[89] NAI Department of An Taoiseach S.5886. Memorandum, 17 June 1929.

In the case of Catherine Aherne also, the 'terrible ordeal' was held to have caused 'considerable anguish, which in itself would be severe punishment.'[90]

The use of pathologised discourses to disavow agency was adopted as a strategy by the women in their own petitions. Mary Kiernan characterised her actions thus, saying that her head 'went wrong.'[91] In her petition, Kiernan herself opened with the claim that 'I did not know what I was doing at the time'.[92] Elizabeth Hannon also stated 'I did it. I did not know what I was doing.'[93] In a later petition of Hannon's she again reiterates this, 'I could not be in my right mind'.[94]

The judgements made on the state of mind of the women were reinforced and medicalised by various professionals, in particular in the use of sub-psychiatric terminology in the reports of Prison Medical Officers. Prison Medical Officers submitted reports which legitimised pathologisation, such as in the case of Elizabeth Hannon; the report stated that Hannon's 'mentality is below the average. Her cerebration is slow but she understands the position in which she is now placed.'[95] Deborah Sullivan too was judged to be 'Of low mental calibre,'[96] while Mary Anne Keane was viewed as 'of a low type of intelligence.'[97]

Some cases provoked more comment on the mental state of the condemned women than others. The apparent lack of any motive in the case of Agnes McAdam caused significant speculation on her mental state.[98] The lack of motive emboldened the defence's argument that she could not have committed the crime; as Agnes had been found to be sane by the Prison Medical Officer it seemed to follow that she could not have committed such an act of insanity.[99] The defence contended that, 'If motive and murder are twin brothers the only possible explanation of a killing is that it is the act of a lunatic, because it is only a lunatic that will wantonly take the life of another without some impelling reason or motive.'[100]

---

[90] NAI Department of Justice 234/2603. Petition on behalf of Catherine Aherne.
[91] Department of Justice 234/1491. Letter from Michael Lennon, 18 March 1927.
[92] Department of Justice 234/1491. 31 January 1927.
[93] NAI Department of An Taoiseach S.5571. Statement, 2 September 1927.
[94] Department of Justice 234/2016. 11 February 1930.
[95] NAI Department of An Taoiseach S.5571. 15 December 1927.
[96] NAI Department of An Taoiseach S.5886. 17 June 1929.
[97] NAI Department of An Taoiseach S.5884. 11 June 1929.
[98] Although the Guards, and indeed the Trial Judge, held their own theory of motive, and referenced Agnes's perceived grudge, see NAI Department of An Taoiseach S.13804A. This case is discussed in greater detail in the Chapter Nine section, 'Betrayal of Domesticity: The Poisoner.'
[99] NAI CCC Monaghan 1946 1D-29-11. Prison Medical Officer.
[100] 'Woman Denies Tampering with Cakes for Social' *Irish Times* (15 February 1946).

Without motive, the crime was inexplicable and unsettling; to defuse this, there were frequent oblique and explicit references to her temperament which presented as an 'abnormal' character. This was seized on by many letter writers. A letter writer expressed this simply in the line 'she is not normal mentally, and consequently at least not fully responsible for her conduct.'[101]

Evidence was given that Agnes was a nervous person, a condition caused by a thrashing accident which occurred over a decade previously in which her left hand had been badly injured since which she had worn a glove. Both Agnes and her brother Patrick testified that she was of a nervous disposition,[102] and Patrick emphasised that 'It affects her nerves badly'.[103]

Agnes was constructed as a woman of lower than average intelligence and of unusual character, one letter writer who appealed for clemency on the strength of her interpretation of Agnes as 'a woman of an abnormal temperament' with a 'defect in her nature'.[104] While the Garda judgement was that Agnes was merely 'reserved' but of normal intelligence, this view was not shared by others who came into contact with her. The Prison Medical Officer reported that she was 'dull mentally and very slow to answer questions', concluding that her 'stream of mental activity is sluggish, that she is weak-minded and by reason of this her judgment and reasoning powers are defective.'[105] Agnes therefore is drawn as possessing an almost childlike appreciation of the consequences of her actions, and her culpability is thereby diminished.

The Prison Medical Officer in Mountjoy Prison also presented a gendered understanding of Agnes's mental state. In his report he recorded that Agnes suffered 'an attack of Hysteria' on her committal to the prison.[106] There are also links to food, a peculiarly feminine means of resistance and site of obsession, and in this case particularly related to the offence itself. On her admittance to prison, Agnes 'was inclined to refuse all food' and while this fasting period did not last, Agnes remained 'fastidious concerning her food.'[107] On her release, the

[101] NAI Department of Justice 18/9074A. Letter from a Ballybay resident, 8 April 1946.
[102] NAI CCA 16/1946. Evidence of Agnes McAdam.
[103] NAI CCA 16/1946. Evidence of Patrick J McAdam.
[104] NAI Department of An Taoiseach S.13804A. Letter, 30 March 1946.
[105] NAI Department of An Taoiseach S.13804A. Memorandum, Prison Medical Officer, 24 February 1946.
[106] NAI Department of An Taoiseach S.13804A. Prison Medical Officer, 24 February 1946.
[107] ibid.

Prison Medical Officer again referred to food through his conclusion that Agnes 'has put on weight.'[108]

However, not all women were constructed by reference to discourses of pathology; Mary Lenihan and Mary Somerville were constructed as being full of agency. These were older women, and no discourses of pathology were deployed to explain their behaviour. While Mary Somerville was once described as 'below the average in intelligence',[109] the Trial Judge attributed more guile to Somerville than was usual. In his charge to the jury he noted that once the body of the infant had been found in the well, 'she must have realised the position at that time. She had plenty of time to think this matter over.'[110]

Sub-Psychiatric Discourses: The Cataclysm of Childbirth and Female Biology as Disease

The association of the female reproductive system with mental illness was noted in Chapter One. Throughout the sample there was evidence of pathologised discourses linked to the concept of female biology as disease, related particularly to childbirth as a cataclysm and also to the pernicious effect of menopause on women's behaviour. These discourses were particularly evident in infanticide cases, in which arguments were made for women which framed their actions as stemming from the mental disturbances attendant on the birth of a child.[111]

Rattigan found that from 1922 to 1950, only three women, or 1.9 per cent of those charged with infanticide offences, were deemed insane and unfit to plead prior to their trial.[112] The low number of women found insane is surprising considering how infanticide was characterised when it became a separate offence in Ireland in 1949, and how it *had* been characterised in 1922 and 1938 in England. The legal reclassification of infanticide was

[108] NAI Department of An Taoiseach S.13804B. Memorandum .
[109] NAI Department of An Taoiseach S.11040. Garda Report, 17 November 1938.
[110] NAI Department of An Taoiseach S.11040.
[111] However, Katherine O'Donovan has argued that these pathologised rationales were initially proposed as an acceptable means of acknowledging and allowing for the difficult socio-economic circumstances of women. See, Katherine O'Donovan (1984) 'The Medicalisation of Infanticide', *Criminal Law Review*, May, 259-264. Within the archives there was some reluctance to commit to the clear and unequivocal pathologisation of infanticide, noted in the comments of the Secretary at the Department of Justice, Stephen Roche. Roche wrote, on the English Infanticide Act of 1938, 'I think that its meticulous pathological phrases about "the effect of birth" and "the effect of lactation consequent on birth" would sound strange in the Dáil.' NAI Department of An Taoiseach S.7788A. However, as noted in Chapter One, this was the wording eventually adopted in the Irish Infanticide Act 1949.
[112] Clíona Rattigan, '"Half Mad at the Time": Unmarried Mothers and Infanticide in Ireland, 1922-1950', in Catherine Cox and Maria Luddy, eds, *Cultures of Care in Irish Medical History, 1750-1970* (Palgrave Macmillan 2010).

premised on a rationale of mental disturbance following birth as well as on the effects of lactation on the female brain. While pathological explanations may have been advanced obliquely to elicit sympathy from Trial Judges and juries, there seems to have been an unwillingness to admit infanticide cases within the legal understanding of insanity.

As an illustration of the limits of this discourse, a medical expert in the trial of Catherine Aherne gave evidence on the links between mental disturbance and childbirth, he 'recalled cases in which mental disorder followed child birth, but the number of such cases was very small.'[113] Therefore, as with the legal threshold of insanity, the discourses of pathology associated with childbirth were often differentially applied and informally cited as mitigation rather than being capable of grounding a full defence.

Trial Judges in infanticide cases grounded recommendations for the extension of mercy in rationales linked to the effect on the mind of giving birth. Justice Johnston recommended commutation of sentence for Elizabeth Hannon due to rationales grounded in her intellect, and directly related this to childbirth:

> Prisoner appeared to him from her demeanour in the dock and her general appearance to be a woman of weak intellect. He is of opinion that her intellect was further clouded by the distressing circumstances attending the birth of the child.[114]

Elsewhere, Justice O'Byrne referenced Mary Kiernan's claim that 'she didn't know what she was doing,' O'Byrne concluded that Kiernan 'must have been in a very weak condition at the time.'[115] The physical exertion of Kiernan's walk, made in wet conditions following her discharge from the County Home, presented an opportunity to pathologise her. The association of the physical cataclysm of childbirth with a corresponding emotional cataclysm ensures that the actions of these women could be shown paternalistic sympathy. Justice O'Byrne referred to the 'pangs and subsequent prostration of childbirth' in reference to Deborah Sullivan,[116] and a petition sent by her solicitors urging commutation stated that 'she was not and could not have been sane.'[117] A further petition said that

[113] 'Another Death Sentence' *Leitrim Observer* (29 June 1929).
[114] NAI Department of An Taoiseach S.5571. 15 December 1927.
[115] NAI Department of Justice 234/1491. 4 February 1927.
[116] NAI Department of An Taoiseach S.5886. Memorandum, 17 June 1929.
[117] NAI Department of Justice 234/2590. 1 July 1929.

medical evidence suggested that she had dementia, but there is no reference elsewhere to this diagnosis.[118]

Mary Anne Keane was also understood through the lens of pathologised childbirth:

> The defence was that a woman forced to walk 16 miles carrying a baby so soon after confinement might be so upset as to be unable to appreciate what she was doing, and moreover that it is not an uncommon thing for women to become mentally unbalanced after confinement.[119]

Giving evidence, a Maternity Nurse who attended Keane said that 'She was quite normal during her illness…. During that time she did not show any signs of disease apart from her natural illness consequent on her confinement.'[120] Her pregnancy was understood as an *illness*.

Two rationales were proposed for Catherine Aherne's offence of infanticide, either the physical consequences of giving birth unaided, or 'alternatively she was so much upset by the circumstances attending the birth that she could not reasonably be held responsible for her actions at the time.'[121] Margaret Finn, too, 'was so upset at the time of the birth that she did not know what she was doing',[122] the *Irish Independent* reported that a medical expert testified that she could have been suffering from 'mania' brought on by weakness following the child's birth.[123] Pregnancy is therefore rendered as a cataclysmic and apocalyptic event which interferes with the capacity of rational thought.

Frances Cox's murder of her brother was also framed, post-conviction, by reference to the fact that she had given birth some weeks before. However this rationale was not introduced during her trial, during which she was constructed as a rational actor who killed for personal gain. Following her conviction, the use of pathology is again evident as a means of excusing her actions and justifying her commutation of sentence.

The Prison Medical Officer found Frances, 'co-operative,' and wrote:

[118] NAI Department of Justice 234/2590. Petition from solicitor.
[119] NAI Department of An Taoiseach S.5884. 11 June 1929.
[120] NAI Department of An Taoiseach S.5884. Deposition of Margaret Campbell, 11 April 1929.
[121] NAI Department of An Taoiseach S.5891. Memorandum.
[122] NAI Department of An Taoiseach S.6129.
[123] 'Death Sentence on Girl' *Irish Independent* (4 March 1931).

> She is calm and rational in speech and behaviour and displays no manifestations suggestive of gross mental disorder. She has been under observation since committal… and has behaved in normal fashion and occupied herself usefully. She has maintained her interest in her home and is quite aware of the market value of stock etc.[124]

While the Guards adhered to the rational motivation that Frances had killed her brother to get the family farm, others relied on the assumed 'disturbance' of the mind attendant on childbirth. For example, Frances's legal counsel submitted a petition for clemency which alluded to an alternative interpretation of her crime. The petition proposed grounds of compassion on the basis of Frances's sex, age and general circumstances; in addition to this it proposed one factor in mitigation which the Minister for Justice considered 'very important':

> Miss Cox gave birth to a child (which she killed) on 18th May and … the poisoning was done between that and the 29th May. The solicitor states that during that period Miss Cox must have been suffering from the effects of child-bearing (at which she received no attention from anyone) and from the effects of suppressed lactation, and he suggests that there is a strong probability that she was suffering from mental derangement at the time.[125]

This interpretation of events is supported by the submissions of a local Protestant clergyman who stated that he had spoken with Frances in the period between the death of the child and the death of her brother, and found her not of sound mind.[126] When Frances's case was being discussed in 1957 in relation to her possible release on licence, the memorandum prepared on the case reported that defence counsel advanced the theory that 'during the period she administered the poison to her brother she was suffering from mental strain following the birth of a child about a week earlier and that she was not entirely responsible for her actions.'[127] While these facts were not introduced, and Cox's defence decided not to attempt an insanity defence, her solicitor cited, in a petition following her conviction, the evidence given by an expert at her trial for the murder of her

[124] NAI CCA 72/1949. Prison Medical Officer, 22 October 1949.
[125] NAI Department of An Taoiseach S.14689A. Memorandum , 21 December 1949.
[126] NAI Department of Justice 18/11757. Note, 21 December 1949.
[127] NAI Department of An Taoiseach S.14689B. Memorandum, 4 March 1957.

infant that stated that 'after an apparent lucid interval some form of insanity is likely to intervene and cannot be definitely excluded.' They further quoted the expert that attendant on the suppression of lactation, 'mental derangement cannot be ruled out.'[128]

In the case of Mary Agnes Bernadette Daly, the fact that she had given birth some months prior to the murder was incorporated as a rationale for leniency and as an explanation for her behaviour:

> [T]he motive is so inadequate and her conduct so inexplicable as to make her appear to have been for the moment insane and her action may have been due to some temporary mental disturbance connected with the birth of her baby some 6 months before.[129]

The menopause was proposed as a means of understanding or predicting women's behaviour also. Innuendos referring to Agnes McAdam's age are used to explain her unusual actions. The Trial Judge explicitly made this reference:

> Though not, so far as I know, mentally deficient, the prisoner made the impression of being a peculiar woman and she may be going through the difficult period in a woman's life, so that I feel anxious about her reactions to the sentence.[130]

Agnes McAdam was understood through this 'time of life' discourse, as well as one of spinsterhood. Lizzie Seal noted that spinsterhood could be a respectable identity, but it was not normative, and pathological theories proposed that spinsterhood was likely to cause pettiness and bitterness in women.[131]

In the case of Jane O'Brien, there are also a number of allusions to the menopause, for example in a petition which declared that 'The Jury had their own view as to the possible

[128] NAI Department of Justice 18/11757A. Petition, 20 December 1949.
[129] NAI Department of Justice 170/7622. Letter from Justice Gavan Duffy, 2 May 1949.
[130] NAI Department of Justice 18/9074A. Letter from Justice Gavan Duffy, 16 February 1946.
[131] Lizzie Seal (2009) 'Discourses of Single Women and Accused of Murder: Mid-twentieth-century Constructions of "Lesbians" and "Spinsters"', *Women's Studies International Forum*, 32(3), 209-218.

emotions of a woman of such years,' referring later to the 'pathological and physiological' effects of her age and motherhood.[132]

The onset of menopause was used in assessments of the 'threat' Kate Owens posed and her risk of future offending. When considering her release from Mountjoy Prison, the Medical Officer stated that, 'There are some indications that she is nearing the menopausal stage of her career.'[133] This was a factor in favour of her release, as it would render a 'persistent offender' unable to conceive again. The Catholic chaplain stated that he was 'fully confident that there is no danger of a relapse.'[134] Two years prior to her release, Owens's case had been considered and dismissed:

> Nevertheless the prisoner's history tends to show that she has not the will power to resist her physical impulses and her release now might only result in a second conviction for child murder. I think the question of her release should be delayed for another two years: she is now about 41 years of age and perhaps by that time she may have passed the child-bearing age.[135]

This demonstrates the preventative detention of Kate Owens, which would be negated when she reached menopause. The pathologisation of Kate Owens, as a 'persistent offender', was illustrative of the association of immorality and low intelligence. Kate was described as 'rather weak minded'.[136] However, an expert had given evidence that she 'was of average intelligence, having regard to her class, condition and education.'[137] This association of sexuality and weakness is a recurring theme in the descriptions of women who became pregnant outside of marriage. Within the sample, women who were convicted of infanticide were frequently judged to be 'weak minded'. This appeared to have been an inevitable judgement and suggested that such women were, almost by default, understood in this manner. The association of this particular offence with low intelligence arguably associated low intelligence with sexuality and the expression of sexuality outside marriage.

---

[132] NAI Department of Justice 18/2737A. Petition on behalf of Jane O'Brien. Indeed, the deliberate intention of Jane O'Brien's crime, the shooting dead of her nephew, was so antithetical to notions of female mentality, that it was cited as key evidence of her *innocence* by defence counsel.
[133] NAI Department of An Taoiseach S.13383B. Memorandum, 12 April 1949.
[134] ibid.
[135] NAI Department of Justice 18/6678A. 10 November 1947.
[136] Department of An Taoiseach S.13383B. Memorandum, 12 April 1949.
[137] NAI Department of Justice 18/6678B. Letter from Justice Kevin Haugh, 22 November 1943.

The labelling of such women as weak-minded appeared to be connected to the women's gullibility or inability to desist from sexual intercourse.

The press seized on the opportunity to reinforce this template of infanticides as unthinking acts committed by frenzied women. The supposed abnormality of Elizabeth Doran was referenced in newspaper reporting; one piece of editorialising recorded that as sentence was passed 'It was obvious to everyone that the prisoner was a person of low intellect'. The article further noted that Doran 'showed no emotion and seemed unable to realise the significance of the Judge's remarks.'[138] Doran was not the only woman rendered unthinking, for example a news report on Elizabeth Hannon, in which the following appeared indented and printed in a different font, 'Asked if she had anything to say, the prisoner, who appeared dazed made no reply, and sentence was passed.'[139] This formulation of words was prevalent throughout reports on verdict; Mary Kiernan was also reported to have listened 'in a dazed way.'[140]

Discourses of Pathology as Paternalism

Sub-psychiatric discourses facilitated the official extension of mercy, in the commutation of sentence from one of death to penal servitude for life; however, these diagnoses also served to minimise the agency of the women and in some cases, infantilise them. The adoption of these paternalistic discourses compounded the perceived need to confine women for longer periods of time, such as in the case of Elizabeth Hannon, who was characterised by the Catholic chaplain as 'weak-minded.'[141] Hannon was considered for release from the religious-run institution to which she had been discharged post-prison, but her release was not recommended, on the grounds that she was 'almost a mental defective.'[142] Probation Officer Kathleen Sullivan expressed this view in her statement that 'They [the nuns] consider her very much below normal in intellect and think she would not be very safe in the world.'[143] In the case of Mary Anne Keane also, her classification as below average intelligence prevented her release from a religious-run institution; Probation

[138] 'Woman Sentenced to Death' *Irish Examiner* (4 June 1926).
[139] 'Woman Sentenced to Death in Dublin' *Irish Independent* (13 December 1927).
[140] 'Baby in Canal: Young Mother Found Guilty of Murder' *Irish Examiner* (29 October 1926).
[141] NAI Department of Justice 234/2016. Letter from Canon McMahon, 2 February 1930.
[142] NAI Department of Justice 234/2016. 15 January 1932.
[143] NAI Department of Justice 234/2016. 13 April 1932.

Officer Sullivan noted that Keane was 'a woman of low mentality. It would not be possible to place her in a situation such as domestic servant.'[144]

Those women who spent the longest periods in confinement were inevitably those who had been labelled as of 'low mentality'. While this label could mitigate culpability post-conviction, it also served to justify the lengthy detention of these women in prison, and in religious-run institutions. As demonstrated in the previous chapter, decisions made advising against the release of reprieved women were often premised on their inability to cope.

Conclusion

Discourses of pathology are not value-neutral; they carry assumptions and associations, and construct women according to elements of identity such as gender and class. This is evident herein, for example in the association of immorality and weak-mindedness, of the link between low intellect and membership of the 'labouring class', and of the labelling of behaviour deemed gender deviant as abnormal.

The certification of Elizabeth Doran and Mamie Cadden as insane post-conviction demonstrated how departure from certain behavioural expectations was judged as abnormal. For example, in both these cases, aggressive behaviour while in prison was one factor used to justify their transfers to Dundrum Criminal Lunatic Asylum.

Elizabeth Doran's case also shows how markers of respectability were understood according to gender and class. In Doran's case, 'labouring class' feminine respectability meant hard work, piety and neighbourliness. As evidenced in the previous chapter, Doran's case further underlines the importance of family support and of 'suitable' families if women were to achieve release from institutions, be they prisons, religious-run institutions or asylums. Once again, the issue of 'wantedness' was pivotal in release. Doran's case also provides an insight into the formal and informal surveillance of women released to their families.

In the case of Cadden, it is argued that her construction as 'bad' overshadowed her depiction as 'mad' for the duration of the trial. The State went to significant lengths to capitally convict Cadden, and the implicit concerns about her mental state only became

[144] NAI Department of Justice 18/3540. 14 June 1929.

explicit post-conviction. This illustrates how discourses could be denied depending on the perceived character of the woman, or the circumstances of her offence. Cadden's devalued reputation and the culturally specific position of abortion in Ireland meant that the criminal justice response emphasised her agency and actively sought to convict her of the capital charge.

Conversely, an exploration of Mary Agnes Bernadette Daly presented a signally different construction of pathology, which again relied on interpretations of her class and gender. Class lines were evident throughout the cases, particularly in the contrast between the Dublin professional elite and the women within the sample, who were predominantly rural. Many of the women were too 'rough' to be considered fitting subjects for a gendered pathology, only a select number of women were pathologised according to stereotypically feminine notions, such as Daly whose disordered mentality was framed around her 'nervous' disorder. Her representation as stereotypically pathological rested on her middle-class background and her feminine frailty.

Pathology was also understood as an inherited trait, in which the women were comprehended as appendages of their family. The association of hereditary insanity and class was evident in the ease with which 'insane' antecedents were found for women. As noted in Chapter Three, rates of hospitalisation in Ireland in the mid-twentieth-century were the highest in Europe.[145] It was hardly surprising therefore that Garda Reports often noted that relatives of the women had, at some time or another, been committed to asylums. Rather than demonstrating the pathological nature of Irish society, as Damien Brennan notes, this merely demonstrated the marginality of many persons displaced in rural Ireland at this time.[146]

Throughout the files, women were interpreted in light of what was 'known' about their extended families. In this way, insanity and 'abnormality' were understood as biologism. This also highlighted the local and community networks, and how 'knowledge' of women in their locale was used by Gardaí and those at the Department of Justice to make sense of the women's crimes.

[145] By 1956, 749.35 persons per 100,000 were in psychiatric hospitals. See, Damien Brennan, *Irish Insanity: 1800-2000* (Routledge 2014).
[146] ibid.

Although the legal threshold for insanity in the criminal trial was a difficult barrier to overcome, discourses of sub-psychiatric terminology were hugely important post-conviction to mobilise support for the commutation of death sentences. Agency was stressed prior to conviction, in order to secure the guilty verdict; following verdict, mitigation and pathologisation were invoked to justify the extension of mercy to women. The sub-psychiatric discourses which were employed to pathologise women herein operated through patriarchal paternalism; this sought to remove the agency of women by suggesting that they did not possess the requisite intelligence which would render them culpable.

These, more subtle discourses of pathology, were evident in almost all the cases; they were identifiable within two broad themes, either linked to a woman's perceived lack of intelligence, or to her reproductive system. 'Low mentality' was frequently cited, as a means of explaining the women's actions and of making them explicable by writing off their intention and culpability. Further, the categorisation of female biology as disease occurred in the infanticide cases, and in cases of women who had recently given birth who murdered adults. The links in such cases were often tenuous, for example in the citation of menopause in the case of Jane O'Brien. The mysterious, 'unknowability' of female bodies and female subjectivities created a useful means of mitigating culpability.

Through the use of discourses of pathology which fell short of actual insanity, women could be presented as deserving of commutation of sentence. These discourses were often vague and unspecified, but were successful in their purpose of easing the extension of mercy. They did not, however, recognise the structural factors which may have motivated behaviour. However, the pathologisation of women in this way did justify the lengthy confinement of some women in various sites of coercive confinement.

Chapter Nine

Appropriate Femininity

Introduction

This chapter explores the construction of the 25 death-sentenced women according to normative notions of femininity and the prevailing sexual mores of post-Independence Ireland. As Chapter One demonstrated, the importance of femininity emerges as a theme in discussions of women who kill; research has noted the differential and often paternalistic treatment afforded to women according to their performance of appropriate femininity.[1] Offending behaviour by women shattered assumptions of appropriate femininity, but this tension could be resolved by designating the women as either 'not criminal' or 'not woman'.[2] Similarly, women who embraced the roles of wife and mother could neutralise offending behaviour. The weight of theory, then, suggests that offending women navigate a complex web of merits and demerits according to their performance of femininity. This chapter presents the ways in which the 25 women herein were understood within these standards, particularly in relation to 'feminine' vulnerability and the normative gender roles of motherhood and domesticity. Deviation from these, typified by the 'masculine' woman or the figure of the poisoner, is also explored.

The sexualisation of offending women, particularly of violent women, also emerges as a theme in the literature. Normative femininity is understood as sexually passive; deviant sexuality can compound the abjection of women who kill.[3] Within the current research, the assumed sexual passivity of women was evident. Women who exhibited sexuality outside of marriage were constructed as gullible, lacking in agency, or as pathologically and dangerously sexual.

---

[1] For example in the denial of femininity to certain offending women who were instead branded as 'masculine', see Cesare Lombroso and William Ferrero, *The Female Offender* (P Owen 1895/1959). In the mid-twentieth-century, Otto Pollak also suggested that women benefited from chivalry within the criminal justice system as a result of their perceived femininity. Pollak also framed women as inherently deceitful, who could play on the stereotype of female vulnerability to secure this chivalry, see Otto Pollak, *The Criminality of Women* (AS Barnes 1961). Later feminist academics used the concept of chivalry critically, for example Worrall proposed a 'gender contract' by which women could benefit from the social dividends of appropriate femininity, see Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990).

[2] Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990).

[3] Camille Naish, *Death Comes to the Maiden: Sex and Execution, 1431-1933* (Routledge 1991).

Vulnerability

Vulnerability is a feature of appropriate femininity.[4] Indeed, the perceived vulnerability of women is one of the key rationales for chivalrous, or paternalistic, treatment.[5]

However, vulnerability must also be interpreted through the prism of class. The women in the sample were women of the 'labouring classes', many of whom were domestic servants, who lived in rural areas, and performed outdoor work. The case of Mary Moynihan illustrates this intersectionality. Moynihan claimed that her employer, Nora Horgan, had been killed by a male intruder who had also struck Moynihan herself unconscious. When neighbours gathered in the house on the day of the killing, there was little sympathy for Moynihan. The neighbours were dismissive of her claims to victimisation and one asked 'how it was that herself and the Misses [sic] were not better able for the man?'[6] The 'toughness' expected of these women, who were rural and involved in domestic and labouring work, was antithetical to notions of vulnerability.

Notwithstanding the lived experience of women in the sample, defence counsel throughout the sample sought to benefit from the dividends of vulnerable femininity. Displays of emotionality and demeanour are particularly important in the depiction of offending women; distress and adherence to feminine comportment can inform the sympathy extended to women, and position them as redeemable.[7] The outpouring of emotions in court is also typically held to be an indicator of 'truth'; veracity can be partially ascertained through outward expression.[8]

---

[4] The association of femininity with weakness has formed the subject of work on the gendered nature of mental illness and of illness as a social construct. See, for example, Barbara Ehrenreich and Deirdre English, *For Her Own Good: 150 Years of the Experts' Advice to Women* (Anchor Books 1989); Hilary Allen, 'Rendering them Harmless: The Professional Portrayal of Women Charged with Serious Violent Crimes', in K Daly and L Maher eds, *Criminology at the Crossroads: Feminist Readings in Crime and Criminology* (Oxford University Press 1998). See also the discussion of pathology and class in the previous chapter, particularly related to the case of Mary Agnes Bernadette Daly.

[5] Elizabeth F Moulds (1978) 'Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System', *Western Political Quarterly*, 31(3), 416-430.

[6] NAI Central Criminal Court (hereinafter 'CCC') 1924 Cork 1C-79-21. Evidence of Ellen Clifford.

[7] Lambert explored the cultural relevance of female emotions and found that the image of the weeping woman was paramount and could emphasise innocence and redemption, see Anthony Lambert (2008) 'Mediating Crime, Mediating Culture: Nationality, Femininity, Corporeality and Territory in the Schapelle Corby Drugs Case', *Crime Media Culture*, 4(2), 237-255.

[8] For example, in his charge to the jury, the Trial Judge in the case of Agnes McAdam commented that 'The demeanour of a witness when giving evidence may greatly help you to decide whether to believe him or not'. NAI Court of Criminal Appeal (hereinafter 'CCA') 16/1946. Trial Judge's Charge to the Jury.

The defence in the trial of Ellen Keogh attempted to construct her as emotionally and physically frail. However, this characterisation was not universally accepted and Ellen was accused by one Guard of seeking to manufacture her distress:

> Guard: She gazed into the fire a long time and then started to cry a little.
>
> Defence Counsel: You are not suggesting that she was mimicing [sic] crying?
>
> Guard: I believe it was.[9]

The allegation was damning and suggested a woman willing to drape herself in the conventions of femininity in order to generate a chivalric response. Indeed, when asked to agree that Ellen was an 'ignorant type of woman', a Detective responded, 'I say she is fairly well educated and I definitely say that she is a clever little lady'.[10] The Trial Judge accepted Ellen's physical frailty but left the question open, and perhaps tacitly answered, as to her intelligence with his suggestion to the jury that 'you may feel that this woman is more astute than what she wants you to believe'.[11] In this context, the attribution of intelligence was a condemnation; if Ellen could be convincingly presented as ignorant, it would assist her defence and further assert her vulnerability.

Suspicion about the claims to ignorance of condemned women was also evident in the case of Frances Cox. One of the investigating Guards, Superintendent George Lawlor, wrote occasional pieces for the *Garda Review* on high-profile crimes. In his articles on the case of Frances Cox, he described her as 'clever', and referred to her 'nefarious plan'.[12] Lawlor's view of Frances as an intelligent woman was also evident during his cross-examination:

> Defence Counsel: You are head of the Technical Bureau here and you were dealing with an ignorant country girl?
>
> George Lawlor: I would not agree to that.
>
> Defence Counsel: A simple country girl?

[9] NAI CCA 56/1944. Evidence of Garda Gerrard McQuaid.
[10] NAI CCA 56/1944. Evidence of Detective Sergeant Thomas Delany.
[11] NAI CCA 56/1944. Trial Judge's Charge to the Jury.
[12] Superintendent George Lawlor, 'Green Street: The Cox Poisoning Case', *Garda Review*, November 1952, at 909.

George Lawlor: Not even that.

Defence Counsel: Well, a country girl?

George Lawlor: Yes.[13]

The courtroom conflicts between defence and Gardaí over the intelligence of the women herein are related to the trope of women as manipulator and deceitful, the antithesis of the vulnerable, and therefore innocent, feminine woman.

Press accounts of trial proceedings also emphasised emotionality; female emotion was newsworthy, as an element of 'colour', as a clue to character and guilt or innocence, and as a token of sentimental melodrama. This was evident throughout, such as the article which revealed that Deborah Sullivan 'was removed weeping' from the courtroom.[14] Catherine Aherne, too, 'clung to a wardress, fainted, and was removed to the cells,'[15] while Margaret Finn 'wept bitterly when the verdict was returned.'[16]

Throughout the press reporting on the case of Elizabeth and Rose Edwards no display of female emotion was unworthy of inclusion. The sub-headings in articles can be interpreted as 'aids', leading the reader through stories and highlighting key elements, such as the sub-heading 'Broke Down'.[17] Elizabeth particularly is presented as more emotional; she 'broke down and cried when she came to the death of the child.'[18] The expression of grief was used by the defence to render Elizabeth more sympathetic: one sub-heading proclaimed 'Was Fond of Child.'[19] In her account of discovering that her infant had died, Elizabeth said 'I cried my fill and held it in my arms.'[20] If Elizabeth could be characterised as grieving for her child, her innocence would become more apparent. Elizabeth's emotional state is supported by an investigating Guard who said that Elizabeth had lain down on the grave of the infant and cried.[21] However, such behaviour, at a grave which Gardaí suspected was itself a concoction may have suggested to some that her grief was pretence.

[13] NAI CCA 72/1949. 18 November 1949.
[14] 'Kerry Child's Fate' *Irish Independent* (14 June 1929).
[15] 'Another Death Sentence' *Leitrim Observer* (29 June 1929).
[16] 'Death Sentence on Girl' *Irish Independent* (4 March 1931).
[17] 'Direction Refused: Sisters' Denial in Baby Murder Charge' *Irish Press* (28 March 1935).
[18] 'Direction Refused: Sisters' Denial in Baby Murder Charge' *Irish Press* (28 March 1935).
[19] 'Sisters Sentenced to Death' *Irish Press* (29 March 1935).
[20] NAI CCA 13/1935. Statement of Elizabeth Edwards, 30 October 1934.
[21] NAI CCA 13/1935. Evidence of Garda John Ennis.

The double-edged sword of emotion meant that if emotion was suspected as pretence it further condemned a woman.

Both displays of emotion and *lack* of emotion were relevant to press reporting, and in many newspaper reports Elizabeth and Rose Edwards were characterised as peculiarly unemotional as verdict was heard: 'Neither of the accused manifested any emotion.'[22] This demonstrates that both the outward display of emotion, as well as the absence of emotion, are both deemed newsworthy, as both are read as integral to proceedings and what we 'know' about the accused.

Alternatively, demeanour could indicate guilt. Jane O'Brien's demeanour when informed of her nephew's killing led Guards to suspect her involvement:

> Sergeant: Immediately she opened the door she started whimpering or sobbing.
>
> Prosecution Counsel: Did you see any tears?
>
> Sergeant: No.[23]

The behaviour of Annie Walsh (1925) following the killing of her husband, further exacerbated views of her as culpable. One witness in the District Court said that Annie Walsh was 'laughing and leaping around the house' following the murder, and behaving 'just as if nothing was wrong.' The press reported this evidence with the sub-heading 'No Distress'.[24] When a Guard was asked by the prosecution 'Did she show any tears?' he responded 'No, nor had she the appearance of having cried beforehand.'[25]

The allegation that various women in the sample had simulated distress was used to suggest their guilty knowledge. One Guard in the trial of Annie Walsh (1929) suggested that she feigned emotion when she learned of the death of her husband, Sonny Dan:

> Defence Counsel: And when she got back you say she was crying?
>
> Guard: Yes.

[22] 'Sentenced to be Hanged' *Irish Times* (29 March 1935); 'Sisters Sentenced to Death' *Irish Press* (29 March 1935).
[23] NAI CCA 9/1932. Evidence of Sergeant Patrick Hanly.
[24] 'Death Penalty for Woman' *Irish Independent* (11 July 1925).
[25] NAI CCC Limerick 1925 1C-90-14. Deposition of Garda James Lavin.

Defence Counsel: Rather hysterical?

Guard: I wouldn't say she was hysterical.

Defence Counsel: She was a bit disturbed?

Guard: Yes.[26]

Mary Moynihan's response to the killing of Nora Horgan was also judged as suspect. One neighbour gave evidence that although at the wake held on the night of the killing Moynihan had appeared to be crying, 'In my opinion she was listening.'[27] There were also conflicting reports as to her demeanour; in his charge to the jury, the Trial Judge stated that 'The suggestion the State makes is that not only is this woman a murderess, but that she is a consummate actress.'[28]

There was no occasion when a woman cried in court which was not held to be newsworthy or worthy of inclusion as persuasive in the criminal trial. Emotion in the courtroom was therefore always relevant. Tears could indicate remorse, sensitivity or vulnerability. Alternatively, emotion could signify pretence, and a lack of emotion could damn a woman. Demeanour too was read for clues as to guilt or innocence, and contravention of acceptable mourning was used in the cases herein to suggest guilty knowledge.

Normative Gender Roles

The construction of appropriate femininity is also bound up with the performance of normative gender roles. The acceptance of normative gender roles for women is imbricated with concepts of the maternal and the domestic; the good woman is the caring woman, situated within the household and family. These roles prioritise motherhood and domesticity as the apex of true womanhood.

As outlined in Chapter Five, the women capitally convicted for infanticide consistently failed to achieve the pinnacle of motherhood. However, the 'illegitimate' motherhood experienced by these women often meant that their status as mothers was suppressed. However, as a mother to four older children, Ellen Keogh was judged for her failure to

[26] NAI CCA 16/1929. Evidence of Sergeant Daniel Gallagher.
[27] NAI CCC 1924 Cork 1C-79-21. Evidence of John James O'Connor.
[28] NAI CCC 1924 Cork 1C-79-21. Trial Judge's Charge to the Jury.

adequately discharge her domestic and maternal duties. A Garda Report stated that her children:

> [W]ere very badly looked after by their mother who kept a dirty and very filthy house. It is doubtful if they were fully fed by the mother who did not seem to be keen on her household and maternal duties.[29]

Conversely, the performance of good mothering was used by defence counsel to garner sympathy. Jane O'Brien's counsel suggested that she had assumed responsibility for the murder of her nephew in order to protect her son. Defence counsel incorporated motherhood in an alternative version of events, presenting a mother trying desperately to protect her son: 'Traps, traps, traps for this poor mother shielding her son.'[30]

Motherhood also emerged as a narrative in the case of Mary Agnes Bernadette Daly, who was interpreted by some members of the public as motivated to kill by the financial pressures of her maternal role. A narrative emerged of a desperate mother, who had killed in a bungled attempt to steal money for her rent. This salvaged her in the eyes of some letter writers, 'In her insanity of desperation torn between love for her baby and a father & husband & a home to shelter them from temporary insanity drove her to it.'[31]

Allied to the position of motherhood, the performance of domesticity also signified appropriate femininity. This was notable within the regimes of prison and religious-run institutions;[32] the work within these institutions was gendered, for example in the sewing work performed by Mary Moynihan,[33] or in Annie Walsh's (1929) comment that she had 'become a very good needlewoman since she had come to prison.'[34] For the women discharged conditionally to religious-run institutions, the regime often involved labour in the laundries. Indeed, the cultural purchase of the term 'Magdalen laundry' illustrated how understandings of coercive confinement in Ireland were associated with gendered notions of work and of women as domestic. Domesticity too was mediated through the social class

[29] NAI Department of Justice 18/7448A. Garda Report, 12 January 1944.
[30] 'Sentence of Death' *Irish Times* (9 June 1932).
[31] NAI Department of Justice 170/7622. Letter, 28 November 1948.
[32] Russell P Dobash, R Emerson Dobash and Sue Gutteridge, *The Imprisonment of Women* (Blackwell 1986); Lucia Zedner, *Women, Crime and Custody in Victorian England* (Oxford University Press 1994); L Mara Dodge, *'Whores and Thieves of the Worst Kind': A Study of Women, Crime, and Prisons, 1835-2000* (Northern Illinois University Press 2006).
[33] NAI Department of Justice 234/1744.
[34] NAI Department of Justice 234/2599. Report, 3 December 1930, of a special visit with Mrs Catherine Lennon, of The Rectory, Tourmakeady, Co May, on 13 November 1930.

of the women; in contrast to notions of middle-class femininity, the femininity of the majority of the women within the sample was premised on hard work.[35] As a cautionary tale, the case of Elizabeth and Rose Edwards were judged adversely because they 'had never been in remunerative employment' and 'appear to have drifted along without thought or concern for their future'.[36]

The assumed domesticity of women was particularly evident in the case of Hannah O'Leary in which normative gender roles contributed to the differential punishments experienced by Hannah and her brother Con O'Leary. Although both had been sentenced to death for the murder of their brother, Hannah experienced reprieve while Con was executed. In his charge to the jury, the Trial Judge outlined his heavily gendered and 'common-sensical' assumptions about what had happened and suggested that Con had taken the active part in the killing while Hannah had cleaned up afterwards. This conjecture was focused on the notion of women as domestic and disinclined to violence:

> There are certain aspects of this case which may suggest themselves to you as being matters in which women may be more likely to be concerned than men. The removal of the blood stained bed clothing and throwing in a heap upon the bed a lot of clean bed clothing, a bolster, a pillow case and other things – you may think that might be a woman's job, that some women had something to say to it. I think it would go far beyond the annals of crime in this Country to think that any woman could carve through the flesh of a man's thigh with a chopper or hatchet and nick the bone and break it in two. It may occur to you that that was a man's job. However, gentlemen, these things are all for you. It was not light work to decapitate the man and carve up his body; it was not a job of the easiest also to dispose of them. It took some time to do it and you may remember the marks of the washing upon the wood work on the top of the bed. That may be a woman's job.[37]

[35] For example, as demonstrated in the previous chapter in the discussion of Elizabeth Doran. Doran's re-categorisation as 'sane' was in part confirmed by her adherence to the femininity expected of a woman of the 'labouring classes' and was related to her employment as a charwoman, NAI Department of Justice 234/1297. Garda Report, 3 August 1932.
[36] NAI Department of Justice 18/885A. Garda Report, 2 April 1935.
[37] NAI CCA 18/1925. Trial Judge's Charge to the Jury.

Hannah O'Leary's reprieve demonstrated the official leniency which could be extended according to the association of women and domesticity, which worked to remove her as an active participant.

Betrayal of Domesticity: The Poisoner

Poisoning represents the ultimate betrayal of domesticity.[38] The figure of the poisoner has traditionally been gendered female, as the role of food preparation is understood as quintessentially female. Two women within the sample killed using the poison strychnine, Agnes McAdam and Frances Cox.[39] These cases therefore provide an opportunity to explore the heavily gendered nature of the figure of 'the poisoner'.

Death by strychnine poisoning is prolonged and painful,[40] rendering the poisoner a particularly maligned figure. This disgust has been associated with an androcentric fear of women as caregivers, trusted to prepare food and tend to the vulnerable.[41] This fear of the female poisoner extended back to nineteenth-century fears of the hidden devil in the house, further perpetuating the stereotype of women as deceitful.[42]

Despite this, the censure which was typically directed towards poisoners was not evident in the case of Agnes McAdam. The suspicion that Agnes McAdam had not intended to kill and the apparently motiveless nature of the killing suggested a pathological explanation, which insulated Agnes from representation as 'evil'.

Lizzie Seal has identified the figure of the 'Witch' in her typology of female murderers; a discourse particularly relevant to older women who kill.[43] The facts of Agnes McAdam's case can be interpreted by reference to this discourse, in the trope of the older woman

[38] Julia Kristeva, *Powers of Horror: An Essay on Abjection* (Columbia University Press 1982).
[39] On Friday 28 September 1945, Agnes McAdam delivered two cakes to her neighbours, the Finnegans. The cakes were intended for a church social, but a substantial portion of one was instead eaten by James Finnegan following his meal. James died later that day and Agnes was sentenced to death for his murder when strychnine was found in the cakes. Frances Cox was sentenced to death for the murder of her brother, Richard Cox, who had died on Sunday 29 May 1949 following four days during which he had experienced pains and convulsions. Frances too had used the poison strychnine. See Appendix for case studies.
[40] During the trials of Agnes McAdam and Frances Cox, descriptions of death by strychnine brought home the full horror of the symptoms. See the evidence of Dr John McGrath in the trial of Agnes McAdam, NAI CCC Monaghan 1946 1D-29-11.
[41] Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales* (Ashgate/Dartmouth 2000).
[42] Ann Jones, *Women Who Kill* (Feminist Press 2009).
[43] Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women who Kill* (Palgrave Macmillan 2010).

baking poisoned cakes.[44] Agnes performed the role of food preparation in her household and cooked often; she was quick to state that she did not mind if people knew she could not bake stating 'I would not be any hand at a cake. I did not mind if the people knew I was not able to bake a cake.'[45] This was a pre-emptive defence, which presumed a cultural demerit attendant on her not being able to bake. Agnes implicitly acknowledged that a woman's reputation was related to domesticity, and that notions of womanliness were imbricated with notions of domesticity. One contested fact in the case was whether the cakes were warm when Agnes delivered them to the Finnegan household.[46] Both Lily and Mary Finnegan gave evidence that they were.[47] The case therefore also recalled the comic situation of a woman passing off shop-bought cakes as her own. The only suggested motive for the poisoned cakes was that Agnes harboured a grudge at being excluded from the organisation of a social; this was described in the memorandum as 'a failure which many women of her type would regard as a serious social slight on their social standing.'[48] Therefore, while Agnes McAdam was not vilified, the case provides an interpretation which can be located within notions of women as domestic, comic tropes of women as competitive, and within mythic notions of the 'Witch'.

Frances Cox, in contrast, was understood as cold and callous. In an article for the *Garda Review* written just three years after her conviction, Superintendent George Lawlor relied heavily on mythical notions of the female poisoner. He wrote that poisoning 'put the weaker of the race on a more level footing with their stronger brethren.'[49] Lawlor went on to say: 'Although we have many cases on record where men have used poison to kill their victims, still it has now come to be regarded more as the weapon of the weaker sex, as, invariably, when a woman decides to kill she resorts to its use.'[50]

---

[44] The incongruous and almost fairy-tale like scenario is compounded by the presence in the archival files of a recipe for baking the cakes.
[45] NAI CCC Monaghan 1946 1D-29-11. Statement of Agnes McAdam, 3 October 1945.
[46] The issue is dissected extensively in the evidence during trial, available from the transcripts available in NAI CCA 16/1946.
[47] For example, Lily Finnegan said that when she lifted the cakes, she 'noticed they were warm. [Agnes] said they are only out of the oven,' while Mary Finnegan said that Agnes 'said she was after cooking it.' NAI CCC Monaghan 1946 1D-29-11. Depositions of Miss Margaret Elizabeth (Lily) Finnegan, and deposition of Mary Finnegan.
[48] NAI Department of An Taoiseach S.13804. Memorandum, Extract from local District Officer.
[49] Superintendent George Lawlor, 'Green Street: The Cox Poisoning Case', *Garda Review*, October 1952, at 847.
[50] Superintendent George Lawlor, 'Green Street: The Cox Poisoning Case', *Garda Review*, October 1952, at 847.

The censure expressed towards Frances Cox was evident in the description of the killing by the prosecution as 'a particularly malevolent, malicious, and utterly callous murder.'[51] Lawlor articulated this also in his article when he wrote that, 'It is hard to conceive that a sister could continuously administer strychnine to a brother and look placidly on his suffering. It is difficult in words to describe such utter callousness.'[52] The lack of any recommendation to mercy from either the jury or the Trial Judge in her case is indicative of the condemnation and revulsion felt towards Frances Cox.[53]

The cases of Agnes McAdam and Frances Cox, while both involved the poisoning by strychnine of adult men, also demonstrated significant differences in the condemnation shown to each. Agnes McAdam was portrayed as a pitiful figure whereas Frances Cox was constructed as deliberate and cunning. This distinction may have related to the simultaneous construction of Cox as dominant and therefore as masculine, which made her killing more abject.

Masculinity

The masculinisation of women who kill is associated with the demonisation of such women as dominant or unnatural.[54] The masculinisation, or defeminisation, of certain women in the sample could be related to the method of killing, the identity of the victim and the occupation and demeanour of the women.

Paradoxically, while Frances Cox killed using the 'women's weapon' of poison, she was constructed as masculine. The evidence presented during Frances's trial, which was reproduced extensively in newspaper reporting,[55] depicted a woman who occupied a prime position in the household and on the farm. This characterisation was evident in a

[51] 'Woman Accused of Poisoning Brother' *Irish Press* (16 November 1949).
[52] Superintendent George Lawlor, 'Green Street: The Cox Poisoning Case', *Garda Review*, October 1952, at 860.
[53] 'Woman Condemned to Death' *Anglo-Celt* (25 November 1949).
[54] As noted earlier, Worrall said that offending behaviour by women could be neutralised in two ways, through labelling them as 'not criminal' or 'not woman', Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990). Similarly, Anette Ballinger wrote that women faced a paradox; when pathologised and labelled as irrational they could be absolved, but only through the loss of their agency. However, for women who were viewed as rational, they risked masculinisation and a harsher criminal justice response. See, Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000). Lizzie Seal included masculinity in her typology of women who kill, and found that it was linked to sexuality, this association of masculinity and dominant sexuality was evident herein also. See, Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010).
[55] 'Woman Accused of Poisoning Brother' *Irish Press* (16 November 1949).

Department of Justice memorandum which described Frances as 'the dominant member of the family'.[56] Frances was also constructed as masculine in contrast to her brother Richard, who was depicted as weak.[57] Frances's dominance was demonstrated through her ability to perform agricultural work, evident in her mother's comment that she was 'as good as any man on the farm.'[58] Frances's dominance, and the seeming gender role reversal of Frances and her brother, may have compounded her negative representation.

The active involvement of Frances in the running of the farm may have appeared surprising, considering the gender roles in rural Ireland. Kennedy has argued that although many women were engaged in agricultural labour, this labour was often eclipsed and valued less than the labour performed by men.[59] Arensberg and Kimball also found that certain jobs remained heavily gendered despite the involvement of women in physical labour on the farm.[60]

The description of Mary Somerville as masculine was similarly premised on her occupation as a farmer. A description of Somerville in a Garda Report echoed Lombrosian theories of female criminality and ideas of the criminal woman as 'non-woman' in its opinion that 'This woman is a rough masculine type'.[61]

Killings by shooting, such as those committed by Jane O'Brien and Marie Murray, were considered atypically 'masculine' also. The 'unusual' nature of such a killing was explicitly referenced during the appeal of Jane O'Brien when the Trial Judge asked defence counsel 'You think it is unusual for a woman to use firearms?'[62] Jane's physical description aided the characterisation of her as masculine and she was described in a subsequent account as 'tall and thin, of strong temper'.[63]

[56] NAI Department of An Taoiseach S.14689B. Memorandum, 4 March 1957.
[57] For example Frances's mother gave evidence that Richard 'would not be able to keep up with me walking or running', and the family doctor gave evidence that Richard was not a very 'robust type'. NAI CCA 72/1949. Evidence of Jemima Cox.
[58] NAI CCA 72/1949. 16 November 1949.
[59] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).
[60] Conrad M Arensberg and Solon T Kimball, *Family and Community in Ireland* (3rd ed, CLASP Press 1940/2001).
[61] NAI Department of An Taoiseach S.11040. Garda Report, 17 November 1938.
[62] 'Wexford Death Sentence' *Irish Press* (7 July 1932).
[63] Kenneth EL Deale, *Memorable Irish Trials* (Constable 1960) at 57.

In the case of Marie Murray, the newspaper reporting emphasised her as the dominant figure in her marriage.[64] Interviews with friends, and relatives gleaned such quotes as 'Friends of the Murrays have agreed that Marie was the stronger personality.'[65] When questioned about her son's political beliefs, Noel Murray's mother responded that if her son was an anarchist 'he got it from Marie, whatever it is.'[66] Indeed, as with the case of Annie Walsh (1925), newspapers speculated that as Marie Murray had been the active participant in the murder of Garda Michael Reynolds, it would be unthinkable to reprieve her alone. One British report noted that, 'A reprieve for Mrs Murray only is thought highly unlikely. She fired the shot which killed Garda Michael Reynolds'.[67]

Annie Walsh (1929) was also characterised as dominant in contrast to her husband. The nephew of the victim gave evidence that he did not visit often and that his uncle 'was not the boss. She was the boss, herself.'[68] This reversal of roles, the dominance of the wife in the home at the expense of the 'natural' head of the household, was suggestive that Annie wielded inappropriately masculine control.

Masculinity as Justification for a Harsher Criminal Justice Response

The anomalous fate of Annie Walsh (1925), and its demonstration of the limits of mercy, was explored in Chapter Five.[69] The construction of Annie Walsh as the dominant party in the killing was one feature of the case which justified her execution. The legal disposal of Annie Walsh can be contrasted with that of Hannah O'Leary, outlined above; each case followed a gendered logic of adherence/deviation from gender roles and the subsequent impact of this on the extension of mercy. Annie Walsh was characterised as mercenary, and as the dominant partner in the plot to murder her husband with Michael Talbot as her dupe. It was alleged throughout the trial that Walsh killed her husband for the compensation she would receive. The use of sub-headings in press reporting presented a means of 'reading' the event, these made frequent reference to Walsh as agentic, deceitful

[64] Marie Murray and Noel Murray had been jointly capitally convicted of the murder of a Guard in 1976. See Chapter Four, and case profile in the Appendix.
[65] 'The Quiet Couple who Face the Hangman's Noose' *Sunday Independent* (13 June 1976).
[66] 'Mother Defends Condemned Son: Noel is Not a Killer' *Irish Press* (11 June 1976).
[67] Derek Brown, 'Couple Unlikely to Hang' *Guardian* (11 June 1976)
[68] NAI CCA 16/1929. Evidence of Sean Walsh.
[69] As outlined in previous chapters, Annie Walsh was executed on 5 August 1925 for the murder of her husband.

and mercenary, evident in the examples of 'Would kill Ned', 'Telling Lies'[70] and 'Waiting for Cheque'.[71] Talbot too depicted Walsh as the 'mastermind';[72] Talbot claimed that Annie had said: 'Come over Friday night and we will kill Ned. I will get compensation for his death. I will give you half of it and the two of us will go away.'[73]

The references to Annie Walsh's age also served to paint her as the dominant party.[74] Annie's husband, Edward Walsh, was described in one headline as an 'aged man done to death'.[75] Rendering the victim weak suggested the dominance of the perpetrator. Talbot, in contrast, was not presented as a strong young man, but was instead described as 'only 23'.[76] Even during Talbot's trial, he was characterised as young and powerless and referred to as 'a servant boy' and 'a young man', further entrenching the respective roles each played within the courtroom drama.[77] In contrast to this, prosecution counsel had emphasised the active dominance of Annie Walsh: 'The case for the prosecution was that Talbot went to the house that night, and with the assistance of a vigorous woman murdered this poor man Walsh.'[78] Talbot's defence counsel forcibly underlined this point also, suggesting that 'dominated by a passionate woman, Talbot was incapable of distinguishing between right and wrong.'[79]

Physical strength was also utilised to further reinforce notions of Annie Walsh as dominant, one witness in the District Court remarked that Edward Walsh had said, 'how strong his wife was for bringing in timber with him.'[80] The repercussions of this construction of Annie as strong were also evident in press reporting which characterised Talbot as 'belonging to' Walsh for example in the headline 'Woman and Her Nephew Hanged'.[81] He therefore becomes a tool of her desires, used by her, not an equal.

---

[70] 'Limerick Murder' *Freeman's Journal* (18 November 1924).
[71] 'Hatchet Crime' *Freeman's Journal* (13 November 1924).
[72] Lizzie Seal used the 'muse/mastermind' dichotomy as one of her typologies of women who kill. See, Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010).
[73] NAI CCC Limerick 1925 1C-90-14. Voluntary statement of Michael Talbot, 26 October 1924, 6.17pm.
[74] Annie Walsh was 31 when she was executed. She was some years older than Michael Talbot, and considerably younger than her husband Edward.
[75] 'Fedamore Horror' *Limerick Leader* (27 October 1924).
[76] 'Double Execution' *Irish Independent* (6 August 1925).
[77] 'To Be Hanged: Brutal County Limerick Murder' *Irish Examiner* (10 July 1925).
[78] ibid.
[79] 'She Killed Him' *Irish Times* (10 July 1925).
[80] NAI CCC Limerick 1925 1C-90-14. Deposition from the District Court of Patrick Shinners.
[81] 'Woman and Her Nephew Hanged' *Ulster Herald* (8 August 1925).

Annie Walsh was also understood as sexually dominant. The murder can therefore be understood by reference to two competing motives, mercenary or sexual. Either presents Walsh as a demonised figure. Diarmaid Ferriter has characterised the Walsh case as involving 'sexual motives', citing the 'classic triangle of young wife, old husband, young lover.'[82] The theme of dangerous sexuality was evident throughout reporting such as in sub-headings like 'Sordid Crime'[83] which were influential in communicating judgements about Walsh.[84] These judgements conspired to create Walsh as an irredeemable and incorrigible figure. That sexual immorality could have tangible criminal justice repercussions was demonstrated by the case of Edith Thompson, executed along with her lover in England in 1923, for the murder of her husband. As noted by many commentators, Thompson's execution was justified as much by reference to her infidelity as to her crime.[85]

Passive Sexuality

Appropriate femininity can therefore be understood as sexually passive, and the expression of sexuality outside of marriage was problematic throughout.[86] The expression of female sexuality was routinely condemned or denied. Sex was not understood as a rational choice for women.[87] Throughout the sample, sexual intercourse was seen as the acquiescence of women to the persuasion of men. Alternatively, in some cases, women who expressed

[82] Diarmuid Ferriter, *Occasions of Sin* (Profile 2009) at 117.
[83]'Co. Limerick Murder: Man and Woman Executed' *Irish Examiner* (6 August 1925).
[84] See also headlines such as '"She Killed Him": Condemned Man and Victim's Wife: Sordid Croom Case' *Irish Times* (10 July 1925).
[85] Anette Ballinger, *Dead Woman Walking: executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000); Lizzie Seal, *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory* (Routledge 2014).
[86] That sexuality itself was considered an offence was illustrated in three examples within the archives which outlined how women, other than the 25 condemned women, were subject to surveillance and punishment for their sexuality. These are the examples of Lily Finnegan, Hannah Lenihan and Annie Somerville. Lily Finnegan was the daughter of James Finnegan, the man killed by Agnes McAdam. During questioning, Agnes McAdam had made reference to Lily's rumoured pregnancy some years before. This prompted an informal investigation and Lily was questioned by Gardaí, NAI Department of Justice 18/9074B. Garda Report, 25 January 1946. In the cases of Mary Lenihan and Mary Somerville, sentenced to death for the murder of their great-grandchild and grandchild respectively, the mothers of the infants were subsequently coercively confined in semi-penal sites. Hannah Lenihan was confined in Henrietta Street in Dublin following her own trial for murder at which she had been acquitted, NAI CCC Cork 1929-1931 1C-94-55. Deposition of Hannah Lenihan, 13 July 1928, taken in Henrietta Street Institution. Annie Somerville was placed by a local Protestant clergyman in a Home run by the Salvation Army in England, NAI Department of Justice 18/3110B. Letter from Governor of Mountjoy Prison, 4 April 1939.
[87] This was particularly notable in Chapter Five in which it was suggested that the censure expressed towards women who had sex outside the bounds of marriage was equal to the censure expressed for the killing of an infant. Chapter Five also argued that the differential policing and prosecution of infanticide could be linked to illegitimacy, which demonstrated that sexuality itself could be understood as the offence.

sexuality outside of marriage were viewed as dangerously and pathologically sexual. There was no way of normalising the sexuality of women.

Instead, women were condemned for their sexuality. For example, in the case of Ellen Keogh, during which the Trial Judge remarked:

> I should imagine that you do agree that it is a shocking thing that this woman should betray her husband … I am sure you feel that whatever party was responsible for bringing about that association that both of them should feel sorrow and shame.[88]

It was also the case that women who had sex outside marriage were viewed as weak. One document on the case of Mary Somerville noted of her daughter, 'It is interesting to observe the apparent simplicity with which the girl was seduced … an interesting commentary of itself of the type of people involved.'[89] As noted in the previous chapter, this 'moral' weakness was often translated into pathologised discourses which mitigated culpability.

The presumption of weakness was evident in cases of sexual assault and rape also. Themes of victim-blaming emerged in the case of Deborah Sullivan who had become pregnant as a result of rape,[90] the suggestion was that a 'virtuous' woman could have resisted. Lindsey Earner-Byrne has noted that victimhood was extended to certain women only, 'for a woman to establish her victimhood when raped, she needed to prove her moral character and physical resistance to assault.'[91] Even the terminology of sexual offences, 'moral outrages', emphasised the violation of morality rather than the violation of bodily autonomy.[92]

---

[88] NAI CCA 56/1944. Trial Judge's Charge to the Jury.
[89] NAI Department of An Taoiseach S.11040. Garda Report, 17 November 1938.
[90] This is outlined in greater detail in Chapter Five.
[91] Lindsey Earner-Byrne (2015) 'The Rape of Mary M.: A Microhistory of Sexual Violence and Moral Redemption in 1920s Ireland', *Journal of the History of Sexuality*, 24(1), 75-98, at 86.
[92] The ambivalence around discussions of female sexuality and reproduction was also notable in the exclusion of female civil servants from such discourses. On the file of Mary Lenihan, a note read: 'It would be better to get a male typist to do the medical evidence as it is a bit technical.' Similarly, on the file of Mary Somerville, was a handwritten note, 'Male typist.' See NAI CCA 30/1928. Letter from Green Street Circuit Court office (Lenihan); and, NAI CCA 36/1938 (Somerville). The paternalistic urge to protect women from unsavoury topics was a recurring theme in 1920s Ireland, during this decade the Minister for Justice had restricted the rights of women to serve on juries and to take employment as court stenographers. See, Thomas Mohr (2006) 'The Rights of Women under the Constitution of the Irish Free State', *Irish Jurist*, 41(1), 20-59.

However, women who expressed sexuality outside of marriage could be rehabilitated and reclaimed if they could be presented as passive. In the case of Elizabeth Hannon, the Catholic chaplain of Mountjoy Prison said:

> She is rather weak-minded and of rather inferior mental capacity, but I would say, not of herself evily inclined. She is one of that type so frequently met with in prison who are led to evil without any great difficulty.[93]

Discourses of passivity 'neutralised' and explained away the expression of female sexuality. Mary Moynihan's case demonstrated how female sexuality could be reinterpreted as passive to mitigate the culpability of women. Although many commentators on the case accepted that Moynihan and Jeremiah Horgan, the husband of the deceased, had been engaged in a sexual relationship,[94] strenuous efforts were made to reframe Moynihan as the victim of a dominant male figure. Mary encouraged these efforts when she spoke out from the dock following her conviction, alleging that Jeremiah 'tempted me with murder, he forced me into that.'[95] Therefore, despite the suggestion of an illicit relationship, Moynihan was reclaimed as a sympathetic figure. This sympathy, and the need to 'neutralise'[96] Moynihan's actions, ensured that blame was laid with Jeremiah Horgan and it was generally believed by many that Horgan had either committed the act, or directed her to commit it. The Catholic chaplain of Mountjoy Prison, petitioning on behalf of Mary, wrote that she had fallen under the influence of a married man, 'who was unscrupulous enough to make love to her.'[97] In her own petitions, Mary spun a narrative of callow foolishness, claiming that 'the man who committed the deed took advantage of this', and made her 'a tool'.[98] The need to absolve Mary Moynihan of responsibility for the murder meant that Horgan had to be demonised.[99]

---

[93] NAI Department of Justice 234/2016. Canon McMahon, 2 February 1930.
[94] For example, a Garda Report confirmed rumours of a sexual relationship and referenced local knowledge that Mary Moynihan had previously given birth to a child which was rumoured to be Jeremiah Horgan's. NAI Department of Justice 234/1744. Garda Report, 5 November 1923.
[95] NAI CCC 1924 Cork 1C-79-21.
[96] Utilising the terminology of Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990).
[97] NAI Department of Justice 234/1744. Letter from John Fitzpatrick, Junior Roman Catholic Chaplain, 6 November 1927.
[98] NAI Department of Justice 234/1744. Petition of Mary Moynihan, 4 November 1927.
[99] Despite the general feeling that Horgan was more to blame than Moynihan, an investigation by the Department of Justice following Moynihan's conviction, concluded that Horgan 'may or may not have

Where possible then, the sexual appetite of women was not countenanced. This was evident in the comment that Ellen Keogh 'resisted' John Mitchell's advances for some time.[100] The terminology used by the Trial Judge also dismissed the possibility of active participation: he said that Ellen 'had sufficient affection for Mitchell to allow him to have sexual intercourse with her'.[101] This phrasing allowed no possibility of mutual attraction or companionship, and merely acknowledged that at some stage Mitchell, the active party, was permitted by Ellen, the passive party, to engage in intercourse with her.

However, Keogh's case presented significant obstacles. In cases in which women could not be neutralised as passively sexual, more insidious interpretations were deployed. As an alternative to this discourse of women as passive, Ellen Keogh and Frances Cox were constructed in some spheres as possessing a dangerous and pathological sexuality. The Garda Report presented the officially sanctioned speculation that Ellen Keogh's first child was not her husband's; one Report surmised that Ellen 'is believed to be sexually inclined'.[102] Ellen was elsewhere condemned as 'addicted to sexuality', a terminology which presented female sexuality as a pathologised weakness. The notion of immorality as a hereditary weakness was also evident in Ellen's case in relation to the similar terms in which sexuality and tuberculosis were discussed. Garda Reports on Ellen's family outlined the hereditary strain of tuberculosis within the family; Ellen's immorality was presented as yet another weakness, albeit one not shared by her brother or sister, who was described in contrast as 'a most respectable married woman.'[103] This tendency for women to be understood within the morality of their wider families was further noted in the comment that Ellen was the 'first to put a blot on the good family history enjoyed.'[104] The importance of the reputation of women in relation to their family was also evident. The previous chapter noted how women were understood in relation to the pathology of their antecedents and relations, and similarly the perceived immorality of women was sometimes related to the perceived immorality of her entire family. Earner-Byrne remarked

---

instigated the murder. That is a matter of mere conjecture.' But the report concluded that there was no evidence on which to proceed. NAI Department of Justice 234/1744. Report by TA Finlay, 24 March 1925.
[100] NAI CCA 56/1944. Evidence of Ellen Keogh.
[101] NAI CCA 56/1944. Trial Judge's Charge to the Jury.
[102] NAI Department of Justice 18/7448A. Garda Report, 25 October 1944.
[103] NAI Department of Justice 18/7448A. Garda Report, 12 January 1944.
[104] NAI Department of Justice 18/7448A. Garda Report, 25 October 1944.

that ‘There was little room for sexual individualism in a society that considered the family guilty by association with very real consequences.’[105]

Frances Cox was also constructed as dangerously sexual; although Cox had been sentenced to death for the murder of her brother, she had been convicted of the manslaughter of her illegitimate infant some months prior to this. The motivation for her brother’s murder which was presented during her trial emphasised Frances’s engagement to a local Roman Catholic farmer; this clandestine engagement and Frances’s admission that she had an earlier pregnancy, presented her as sexually agentic. The local Protestant clergyman, appealing for mercy on behalf of Frances, confided that Frances was ‘a sex maniac’.[106]

The social censure and concern directed towards female sexuality in post-Independence Ireland and the conservatism and Catholicism of the new State emerged during the review of the literature on Ireland. The grafting of Catholic Church teachings onto agricultural systems of economy and society ensured that sex and marriage were tightly controlled in rural Ireland particularly, where the majority of women within the sample were from. As marriage remained a property transaction for many, the possibility of extra-marital sex or illegitimate children posed obstacles to the patrilineal system of land inheritance which contributed towards the desexualisation of women.[107]

Despite this notion of women as passive, there was evidence throughout the sample of quotidian social practices which offer a less dogmatic picture of Irish life. Dymphna McLoughlin argued that while marriage was officially seen as the only fitting site of sexuality, the Irish people did not simply stop having pre-marital and extra-marital sex after the Famine.[108] In the Garda Report on Elizabeth and Rose Edwards it was stated, with disapproval, that their ‘main interest has been the seeking of amusement in the form of dances, and the company of men.’ The Report concluded: ‘It had come to be regarded here as the normal thing for looseness on the part of women to be, if not what was expected of

[105] Lindsey Earner-Byrne also argues that in this context reputation was an agent of social control, Lindsey Earner-Byrne (2008) ‘Reinforcing the Family: The Role of Gender, Morality and Sexuality in Irish Welfare Policy, 1922-1944’, *History of the Family*, 13(4), 360-369, at 363.
[106] NAI Department of Justice 18/11757A. Note, 21 December 1949.
[107] JJ Lee, ‘Women and the Church since the Famine,’ in Margaret MacCurtain and Donncha Ó Corráin, eds, *Women in Irish Society: The Historical Dimension* (Women’s Press 1978).
[108] Dymphna McLoughlin (1994) ‘Women and Sexuality in Nineteenth-Century Ireland’, in Alan Hayes and Diane Urquhart, eds, *The Irish Women’s History Reader* (Routledge 2001).

them, then something one need not feel astonished at.'[109] The existence of such relationships between unmarried persons is also evident in the case of Mary Kiernan in defence counsel's summary of her lifestyle:

> Her story was that she had been 'company-keeping,' – a phrase which sessions has taught me means, among the rural – i.e. most of my countrymen – habitual immorality with someone who had left her when she had become pregnant.[110]

Therefore, while women were officially constructed as sexually passive, evidence throughout the cases betrayed the prevalence of sexual relationships between unmarried persons. The rigid morality of the Catholic middle-classes was not the practice for many in Ireland in the period following Independence.[111] Indeed, as Earner-Byrne notes, despite reports to the contrary, Ireland 'was not a country devoid of sex or sexuality'.[112]

Reputation

Many of the cases herein demonstrate the networks of local knowledge and rumour, and the tangible effects of reputation for women who deviated from passive sexuality. Women who were understood by their local community as sexually deviant were subject to rumours and were possessed of a devalued reputation. Two women within the sample, Annie Walsh (1929) and Jane O'Brien, were depicted in this light; 'local knowledge' facilitated the construction of these women as evil.

The extra-marital relationship between Walsh and Martin Joyce, both condemned to death for the murder of Annie's husband, Sonny Dan, was the subject of various local rumours. One witness gave evidence that when Sonny Dan was found dead he said to Martin Joyce that 'he would get it very hard on account of the fact that everybody in the country knew he was going with the woman.'[113] Indeed, the Trial Judge stated that it would be 'almost impossible' to think that an 'intrigue' had not taken place.[114]

---

[109] NAI Department of Justice 18/885. Garda Report, 2 April 1935.
[110] NAI Department of Justice 234/1491. Letter from Michael Lennon, 18 March 1927.
[111] Sandra McAvoy, 'The Regulation of Sexuality in the Irish Free State, 1929-1935', in Greta Jones and Elizabeth Malcolm, eds, *Medicine, Disease and the State in Ireland, 1650-1940* (Cork University Press 1999).
[112] Lindsey Earner-Byrne (2008) 'Reinforcing the Family: The Role of Gender, Morality and Sexuality in Irish Welfare Policy, 1922-1944', *History of the Family*, 13(4), 360-369, at 364.
[113] NAI CCA 16/1929. Evidence of Thomas Canavan.
[114] NAI Department of An Taoiseach S.5904. Trial Judge's Charge to the Jury.

Walsh's devalued reputation infused Garda Reports on her character, evident in a memorandum which reported the suspicions of Gardaí:

> Mrs Walsh, if the police are to be believed, is far from being the patient and suffering angel …. She certainly lived in sin with Joyce and the police say that she actually offered him her own young daughter for his amusement in order to keep him hanging about the house.[115]

Another memorandum alleged more previous wrongdoing: 'Mrs Walsh is a wicked criminal, it is also alleged she dispensed of her first husband in America.'[116]

The construction of Jane O'Brien as sexually deviant compounded the already unflattering portrait of her as dominant and masculine. Again, these allegations were unearthed by Gardaí from the reservoir of 'local knowledge'. One Garda Report noted that Jane 'bears a very bad repute – she is said to have lived a very immoral life'.[117] Jane O'Brien was also the subject of informal allegations of previous, serious wrongdoing; it was noted that her brother had died 'rather mysteriously and the local people suspect that he was poisoned and that Jane O'Brien who was described to me as the Devil would be responsible for committing the act.'[118]

A reputation for immorality could also prompt informal surveillance by the community and could also direct official surveillance by Gardaí. Reputation was strongly tainted in cases where there was intergenerational illegitimacy within the family, such as in the cases of Mary Lenihan and Mary Somerville. A Garda Report recorded that Mary Somerville, 'had the reputation of being of loose moral character. It is freely stated in the locality that her husband… was not the father of some of the young members of the family.'[119] Somerville's pregnancy 'in her extreme youth' was also referenced as indicative of her base moral character.[120] The reputation of Somerville's family as immoral led the Guards

[115] NAI Department of Justice 234/2599. Memorandum, 30 June 1932.
[116] NAI Department of Justice 234/2599. Memorandum, 4 July 1929.
[117] NAI Department of Justice 18/2737. Garda Report from McCarthy, from his recollections, undated.
[118] NAI Department of Justice 18/2737. Garda Report by C O'Halloran, from his recollections, 11 June 1932.
[119] NAI Department of An Taoiseach S.11040. Garda Report, 17 November 1938.
[120] ibid.

to investigate the rumour that her daughter, Annie, had been pregnant; they stated that 'In view of the reputation of the family it was decided to institute inquiries at once.'[121]

The importance of local opinion was evident as a foundation for many official opinions, such as in the case of Mary Kiernan who was described as having 'a bad moral character', and who 'is said to be rather weak-minded.'[122] Elizabeth Doran was also 'reputed locally to be of a very depraved, immoral type'.[123]

Appearance

The literature on women who kill has noted the sexualised reporting on such cases; this can involve the exploitation of female sexuality according to *femme fatale* tropes and a focus on the appearance of offending women.[124] However, few women herein were sexualised in the press. The particular context of the sexual mores operating in the decades post-Independence sits uneasily with a glamourised depiction of violent women.[125]

This reinforces the template of passive sexuality as integral to Irish womanhood. It also relates to the class and social position of women herein, to the 'roughness' of rural farming life, and the unsuitability of discourses of glamour in these cases. However, unique among the sample, the press reporting of Mamie Cadden offered an example of a woman who was sexualised by the press.

Press interest in the case focused significantly on her appearance and what she wore; one report read, 'Miss Cadden wore a beaver lamb coat, fur cap and pink scarf. She had cluster earrings with a matching cluster on the collar of her coat.'[126] Later newspaper reporting focused on this glamour also: 'The glamorous blonde nurse, who drove a red MG and lived the high life while working in Hume Street, carried out hundreds of abortions,'[127] neatly entwining an image of glamour with one of horror. Another recent article recounting the

[121] ibid.
[122] NAI Department of Justice 234/1491. Garda Report.
[123] NAI GPB/PEN/3/216.
[124] Frances Heidensohn, *Women and Crime* (2nd ed, Macmillan 1996).
[125] Tom Inglis and Carol MacKeogh (2012) 'The Double Bind: Women, Honour and Sexuality in Contemporary Ireland', *Media, Culture and Society*, 34(1), 68-82.
[126] 'Nurse Sent for Trial on Threat Charge' *Irish Times* (9 May 1956).
[127] Ciaran Byrne, 'The Year a Hangman was made Redundant' *Irish Independent* (1 October 2011).

case described Cadden as, 'Brash, belligerent, blonde.'[128] Indeed throughout reporting, Cadden's blonde hair became a cipher for glamour.[129]

The quality of description became more lurid according to the purpose and audience of the publication. For example, the sensationalist true crime texts which recall the Cadden case feature emotive descriptions such as, 'the blonde midwife from hell'.[130] Ray Kavanagh, in his biography of Cadden, also substantially repackaged the idea of Cadden as glamorous; his work is tinged with a sexualised representation. Presenting a chapter in fictionalised and informal narrative style, her red sports-car is recalled:

> It was the sexiest car in the Free State: KG 1647, she remembered it well. It had been imported from Wales. The look of envy when she whizzed around town in it had to be seen to be believed. Once a man spat in her face! But there was lust in the eyes of the men too; she remembered that as well.[131]

Through this reporting, Cadden's sexuality and her perceived 'glamour' became a caricature which further served to 'Other' her.

Conclusion

The chapter has explored how the women in the sample were gendered according to notions of appropriate femininity. Appropriate femininity relates to prized traits of femininity, such as vulnerability, and extends to the performance of normative gender roles such as motherhood and domesticity. Appropriate femininity, particularly in the context of Ireland post-1922, was also asexual, or sexual only within the narrowly defined bounds of marriage. The chapter has examined how the 25 condemned women were understood and assessed according to these standards. The analysis demonstrates that many of the condemned women herein failed to comply with standards of appropriate femininity.

Appropriate femininity was understood as vulnerable. However, the analysis herein has demonstrated the problematic nature of this requirement for women who performed hard, manual work, and who were categorised as belonging to the 'labouring classes' of rural

[128] John Meagher, 'The Case of Nurse Mamie Cadden Horrified Ireland: 17 Hume Street' *Irish Independent* (3 March 2012).
[129] 'Charged with Assistant' *Irish Independent* (2 May 1939); 'Nurse Cadden is Sentenced to 12 Months' Hard Labour' *Irish Press* (13 May 1939).
[130] David M Kiely, *Bloody Women* (Gill and Macmillan) at 203.
[131] Ray Kavanagh, *Mamie Cadden: Backstreet Abortionist* (Mercier Press 2005) at 14.

Ireland. Vulnerability *was* acceptable in the courtroom however, and signs of emotionality and demeanour during the trial could be read as indicative of guilt or innocence. The convincing demonstration of emotion in court could help construct women as fragile and sympathetic. The newsworthiness of these matters reinforced the notion of appropriate femininity as emotional. However, the suggestion that vulnerability or emotionality was feigned could alternatively be presented as evidence of guilt. Throughout the trials, there was evidence of conflict between defence counsels and Guards as competing narratives of the women as ignorant or cunning played out.

Appropriate femininity was also bound up with normative gender roles. The failure to perform the maternal role was noted in some cases, while in others defence counsel sought to use good mothering as a shield to protect their client. The assumed domesticity of women was also noted herein, for example in the lethal deviation from domesticity represented by the figure of the poisoner. Deviation from gender roles was also evident in the cases of women who were constructed as masculine. Masculinisation of women herein was often linked with the choice of victim, and the means of killing. 'Atypical' methods of killing such as firearms, and the killing of adult men, both worked in the sample to render women dominant and masculine. In the case of Annie Walsh (1925), her construction as dominant and masculine served as justification for her execution.

The chapter has also attempted to show that appropriate femininity in Ireland post-1922 was one devoid of sexuality. Sexuality was routinely neutralised or denied throughout the sample, as antithetical to respectable femininity. This assumed sexual passivity can be linked to an Irish paternalism concerned particularly with the fear that young women were sexually vulnerable and in need of protection.[132] There were attempts to rehabilitate the reputations of some women herein through reframing them as sexually passive. In cases in which women could not entirely be 'excused' for their sexuality, there was evidence that they were constructed as dangerously and pathologically sexual.

The chapter has argued that appropriate femininity must be understood in the context of Irish society post-Independence. The insistence on passive sexuality was mandated by discourses of moralism which dominated in Ireland during this period. The almost

[132] See, for example, David M Doyle (2011) '"The Guilty Sexual Predator" and the "Innocent Comely Maiden": Gender, Paternalism and the Pregnancy Factor', *Irish Criminal Law Journal*, 21(2), 36-40.

complete absence of narratives of sexuality in press reporting reflected the unwillingness to see women as sexual beings. The particular Irish context was also evident in the notable absence of sexualised and glamourised discourses of the women within the sample. Instead, the condemned women should be understood according to the imperatives of Irish society post-1922; the identity of most of the condemned women as rural, marginalised and of the 'labouring classes' further shaped the discourses of appropriate femininity within the sample. The role of reputation too emerged through the analysis; reputation played a role in the judgement and surveillance of the condemned women. Local knowledge about the women and their families made their character explicable to those in authority. For example, the 'stain' of illegitimacy was perceived as evidence of an immoral tendency within a family, while a respectable family could be offered in mitigation of a woman's acts. This contextual understanding of Irish society is therefore essential to an appreciation of how narratives of appropriate femininity were determinedly related to their time and place.

Conclusion – Gendering the Condemned

Introduction

This thesis sought to explore the topic of women and capital punishment in Ireland post-Independence. An examination was conducted of the 25 cases of women sentenced to death post-1922, in order to provide both an encompassing descriptive account of the women sentenced to death post-Independence, and a comprehensive qualitative analysis of these cases.

The research herein represents the first qualitative analysis of women sentenced to death in Ireland post-1922; it is the first research to take this cohort of women as its starting point. The research was motivated by a desire to incorporate these cases of female condemned into Irish criminal justice history, and to reconceptualise perceptions of women and capital punishment in Ireland. The research therefore sought to recover the stories of death-sentenced women, engaging in a process of recovery informed by feminist approaches to epistemology.

The thesis explored the cases of the 25 women who were sentenced to death in Ireland post-1922. Of these women, one was executed, three had their capital convictions quashed or altered in some way, and 21 women had their sentence of death commuted to one of penal servitude for life. These 25 cases have been examined and analysed with extensive use of original, archival material, as outlined in earlier chapters.

In conducting an exploration of these cases, extensive archival research was undertaken; the findings presented, and the arguments built throughout this thesis, are grounded in these archival materials, and in the political, economic, social and cultural conditions which dominated discourse. The methodological approach of discourse analysis, informed by a feminist methodology, was employed to analyse the archival material herein. The thesis sought to interpret, understand and explain the broader societal discourses which governed the fates of condemned women, and contributed to how each was constructed and understood. This analysis has identified the gendering processes at work in the construction of the condemned women herein. Close reading of the material demonstrates a need to see capital punishment as a gendered punishment and offers an alternative means of interpreting the experience of women and capital punishment in Ireland post-1922 by

reference to themes of coercive confinement, paternalism and patriarchy. This concluding chapter presents an overview of the research and elaborates on how the findings herein are located within these larger conceptual frameworks.

With reference to the 25 cases explored herein, the thesis is original in its inclusion of women who were sentenced to death and subsequently reprieved; work on persons sentenced to death and *reprieved* is sparse. The thesis therefore contributes to this neglected area through inclusion of the 21 cases of women whose capital sentences were commuted to penal servitude for life, alongside the case of the individual woman who was executed post-Independence (Annie Walsh, in 1925).

Additionally, the inclusion of the three cases of women whose capital convictions were ultimately quashed ensures totality of representation. The thesis explicitly includes *all* cases of women sentenced to death in Ireland post-1922, whereas other accounts of capital punishment make reference to 22, rather than 25, women. Analysis of these cases added much to the research herein. Inclusion of these cases has, for a start, shown the processes through which women could have death sentence removed, and how this left legal fictions in its wake. These three women experienced the same processes of 'death sentencing', just as the public received news of their death sentences in the daily papers in the same manner as they did with the other condemned women herein. Therefore, while the law may have operated retrospectively in the quashing of these convictions, the lived experience of death sentence remained. These cases therefore also demonstrate the contingent nature of the law.

The research is also original in the archival materials used. The individual prisoner files within the Department of Justice archive, which are not generally open to the public, provided incredibly rich detail and opened up the research project further. Previous works touching on this area have not drawn upon this archival store.[1] These files were perhaps most enlightening in pointing the way towards the heavy use of institutionalisation post-prison for reprieved women and in further providing the few extant examples of the 'voices' of condemned women. Access to this material expanded the scope of the research,

[1] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91; Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012); Karen M Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.

and made it possible to follow the archival trail as far as it would lead. Indeed, the inclusion of these documents prompts questions of what further access, for example to the records of the religious orders and congregations, could yield.[2]

The thesis has explored a previously under-researched area. Women sentenced to death in Ireland post-1922 had not previously been the subject of research as a cohort worthy of enquiry. Indeed, prior to the research herein, very little had been written on this topic. As outlined at the outset of the thesis, Irish history has traditionally been androcentric.[3] This thesis has therefore incorporated 'missing history', through an examination of the lives of a cohort of women not previously researched. The research incorporates women within a cultural memory of capital punishment which had traditionally assumed a male subject, and imagined the death penalty as a tool used for political ends.[4]

Within Irish literature, as outlined in Chapter Three, there is a dearth of research on women and crime and little has been written on women who kill. The research therefore contributes to the emerging body of literature on women who kill[5] and women and the death penalty.[6] This literature has explored the contours of representation of women who kill, including the use of 'stock stories' in such cases, and how these discourses contribute to judgement and punishment. Cases of women who kill had represented a troubling area for feminist scholarship as such cases problematised an understanding of women as oppressed. However, as Lizzie Seal notes, this difficulty renders this area of scholarship even more vital as 'women who kill trouble the masculine/feminine gender binary by transgressing its boundaries, making gender constructions of women who kill an essential

[2] Explored further below, access to the records of these organisations is strictly regulated and is generally closed to researchers.
[3] Margaret MacCurtain and Mary O'Dowd, *Women in Early Modern Ireland* (Edinburgh University Press 1991); Mary McAuliffe, 'Irish Histories: Gender, Women and Sexualities', in Katherine O'Donnell and Mary McAuliffe, eds, *Palgrave Advances in Irish History* (Palgrave 2009).
[4] As noted in, Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006).
[5] Marie Fox, 'Crime and Punishment: Representations of Female Killers in Law and Literature', in John Morison and Christine Bell, eds, *Tall Stories? Reading Law and Literature* (Dartmouth 1996); Belinda Morrissey, *When Women Kill: Questions of Agency and Subjectivity* (Routledge 2003); Ann Jones, *Women Who Kill* (Feminist Press 2009); Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave 2010).
[6] Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000); Victor L Streib, *The Fairer Death: Executing Women in Ohio* (Ohio University Press 2006); Mary Welek Atwell, *Wretched Sisters: Examining Gender and Capital Punishment* (2nd ed, Peter Lang 2014).

area for feminist analysis.'[7] Seal has noted that there are recurrent themes throughout this literature, but that cases can also be analysed regarding the specificities of time and place.[8] This thesis can therefore contribute to a wider debate on how such women are represented, offering findings which demonstrate the continuities of representation, as well as the cultural specificity of Irish cases. While bound, in some respects, by the historical moment and the particular context, the analysis offered within, and the findings, are transferable beyond this immediate context.

As mentioned, there is a small but emergent body of literature on capital punishment in post-Independence Ireland, most of it published in the past few years.[9] Within this nascent literature, issues of gender have been explored; David M Doyle and Ian O'Donnell have concluded that the gender differential in commutation of death sentence was the most striking feature of how the penalty was applied.[10] However, the research herein has sought to move beyond this finding, and to explore more fully the positions and experiences of women sentenced to death in Ireland *qua* women. From this enquiry, key findings relating to issues of gendered punishment, coercive confinement and concepts of paternalism and patriarchy emerged, these are explored more fully at the close of this chapter.

Methodology

The research herein engaged with methodological traditions of discourse analysis, feminist epistemology and an awareness of historical criminology. Utilising these approaches, the thesis has offered a critical and in-depth qualitative analysis of cases which has drawn heavily on the prevailing political, economic, social and cultural conditions.

The methodological approach within the thesis offers an innovative way of theorising the cases of women sentenced to death. The decision to employ discourse analysis reflects

[7] Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010) at 1.
[8] Seal uses the device of 'microhistories' to explore how individual cases can elaborate broader societal preoccupations and appropriate gender roles. See, ibid.
[9] Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006); David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independence Ireland', *Journal of Legal History*, 33(1), 65-91; David M Doyle and Ian O'Donnell (2014) 'A Family Affair? English Hangmen and a Dublin Jail', 1923-54, *New Hibernia Review*, 18(4), 101-118; David Matthew Doyle (2015) 'Republicans, Martryology, and the Death Penalty in Britain and Ireland, 1939-1990', *Journal of British Studies*, 54(3), 703-722.
[10] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independent Ireland', *Journal of Legal History*, 33(1), 65-91.

poststructuralist attempts to understand social phenomena. In the introductory chapter to this thesis, David Garland's observation that capital punishment is 'as much about discourse, as it is about death' was used to justify this methodological approach.[11] The thesis has throughout demonstrated that discourse *was* the means by which women were excused or condemned. For example, within the cohort, only one woman was executed; how did the others receive mercy? The thesis argues that mercy was considered according to currents of discourse, imbued with meanings, which created societal-level understandings of who should and should not die. These are the same strands of meaning that underpinned statutes, for example the Infanticide Act 1949, or the guidelines used in the Department of Justice, such as those regarding the working rule in cases of infanticide, or the implicit rationales which exempted women from hanging. These shared understandings regarding the meaning of judicial death were articulated and shaped by discourse. What death as a punishment means in a society at a given time can only be moulded by discourse; decisions and precedents, for example, are carved out by actors and agencies, persuasively and over time, crafting arguments and creating certain groups as exceptional according to a process of difference/equivalence. Within poststructuralism, processes of deconstruction can attempt to discern how this framework creates meanings which are referential and relative.[12] Throughout the thesis, these meanings were deconstructed to see *how* they operated at the level of the cases of women condemned to death.

The methodological approach of discourse analysis therefore allowed for the identification of broader currents of thought, and the prevailing, dominant hegemonic discourses through which the condemned women were made intelligible. This epistemological approach demonstrated the material effects of discourse, evident in the explicitly gendered nature of the construction and punishment of the women herein.

A gendered perspective informed by a critical feminist position has also allowed for the inclusion of the voices of the 25 women, and the thesis has attempted to reveal the subjectivities of these condemned women. The 'subjugated knowledges' are herein recovered, through excavation of the few writings left behind by capitally convicted

[11] David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Oxford University Press 2010) at 7.
[12] See how these approaches have been used, for example, in Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010).

women.[13] Analysis of their letters, petitions and statements offers some insight into how the women understood their position. Petitions, particularly, illustrated the concerns of the women and provided a glimpse of the deprivations experienced by each woman in prison. The women's voices provide some inkling of how capitally convicted women interpreted their detention and negotiated imprisonment. The discourses throughout most of the sample were framed from a position of power and authority; legal professionals, Gardaí, civil servants and politicians constructed the condemned women according to the prevailing tropes of womanhood. The women were therefore constructed by those to whom they were ultimately unknowable, due to divisions of class, gender and sexuality.

The thesis therefore contributes to a feminist project which seeks to create and contribute 'knowledge' about women. As discussed earlier,[14] this endeavour has been problematised by the epistemologies of standpoint and particularly postmodern feminism; however, the research offers glimpses of the voices of women not otherwise heard. While projects which seek to 'produce' knowledge about marginalised and silenced persons run the risk of speaking 'for' these persons, these caveats notwithstanding, the research herein has drawn carefully from the extant archival materials, and has sought to uncover the words of condemned women.

The research has therefore engaged with literature which has proceeded from a methodological position of feminist epistemology, and particularly those works which incorporate poststructuralist theories of how language reinforces and perpetuates female roles.[15] Such analysis has informed the approach to research herein, and has shaped how findings emerged.

These methodological approaches query the idea that numbers alone can reveal a knowable truth. Through in-depth discourses analysis, informed particularly by a critical feminist position, the thesis has argued throughout that a comparison of the numbers of women executed versus the number of men executed reveals a partial finding only and a finding

[13] Michel Foucault, *Power/Knowledge: Selected Interviews and other writings, 1972-1977*, Colin Gordon, editor/translator (Harvester Press 1980).
[14] See the discussion within Methodology, at 23.
[15] Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990/2000); Mary Joe Frug (1992) 'A Postmodern Feminist Legal Manifesto (An Unfinished Draft)', *Harvard Law Review*, 105(5), 1045-1075.

apt to misrepresentation. Only 1 woman of 22 was executed (compared to 34 of 68 men[16]); however, a side-by-side comparison of these figures reveals little about the meanings of capital punishment.[17]

Findings

The 25 Cases

As outlined in Chapter Five, in the majority of the 25 cases examined in this thesis, the condemned women were sentenced to death for infanticide; 14 women out of 25 were capitally convicted for this offence. Most cases of suspected infanticide were disposed of by way of lesser charges;[18] the cases herein therefore represented 'aggravated' cases. The legal status of the infant was identified as an aggravating feature; all but one of the infant victims in the sample was illegitimate. The prosecution of infanticide was therefore understood as a proxy for illegitimacy. However, despite the moral censure directed towards illegitimacy, commutation of death sentence was the unvarying practice. Indeed, the creation of infanticide as an exceptional category of capital conviction was also evident in the 'working rule' on infanticide, which directed that such women should be imprisoned for two years before being released to a religious-run institution.

Chapter Six examined the notion of mercy, and how this mercy was negotiated throughout the trial process and following conviction. In line with the international literature overviewed in Chapter Two, the cases herein demonstrated the gender differential in capital punishment in Ireland, and the processes which contributed to the reprieve of female condemned. Mercy was officially extended to 21 of the condemned women within the sample through commutation of death sentence to penal servitude for life. The rationales proposed to justify reprieve in the individual cases were formulaic, relying on personal characteristics such as age, poverty, 'low mentality', and gender. Throughout the thesis, the application of mercy as a function of gender was noted. It was the unofficial but

[16] David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independent Ireland', *Journal of Legal History*, 33(1), 65-91.
[17] See, for example, Anette Ballinger's contention that when cases of women condemned for the murder of an infant were removed from her sample, it emerged that those women who killed adults were *less* likely to receive a reprieve than men. Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000).
[18] See, for example, Clíona Rattigan, *'What else could I do?': Single Mothers and Infanticide, Ireland 1900-1950* (Irish Academic Press 2012); Karen M Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.

occasionally stated policy that it was inappropriate to execute women. Women had their sentence commuted *qua* women.

An analysis of the confinement of reprieved women illustrated the continuing process of negotiating mercy, and how this influenced where, and for how long, women were confined. Chapter Seven investigated the confinement of reprieved women in prison and in religious-run institutions. The majority of reprieved women spent little time in prison, although as noted in two cases, reprieved women spent almost two decades in prison prior to conditional discharge. However, the thesis also examined the post-prison disposals for reprieved women. Of the 21 reprieved women, 11 were conditionally discharged to religious-run institutions. The decision-making which facilitated transfer to and release from these semi-penal sites was informal and discretionary, and women often spent much longer periods confined within these sites, thus undermining the assumption that women were necessarily afforded greater leniency than men post-conviction.

Discourses of pathology were evident throughout the sample and were explored in detail in Chapter Eight. However, for most condemned women the discourses of pathology were subtle, and avoided explicit psychiatric diagnoses. Instead, the use of innuendo to suggest that women were 'feeble-minded', and the use of the trope of biology as disease in cases of infanticide, facilitated the extension of mercy to these women which operated to neutralise their offending behaviour. An investigation of pathologised discourses is crucial in light of the existing literature on women and crime, as outlined in Chapter One. The discourses of pathology identified throughout the archival material on the condemned women were framed around notions of gender, but also around concepts of class, ruralism and family. Pathology and mental capacity were also associated with judgements relating to perceived immorality. The research also noted that individualised understandings of pathology shifted the focus from those structural level factors which would have implied a critique of society.

Chapter Nine demonstrated that women within the sample were assessed according to standards of appropriate femininity. These were understood as feminine vulnerability, manifested in suitable displays of emotion and grief. The women were also defined by their adherence to or deviation from the normative gender roles of maternity and domesticity. This chapter highlighted that the condemned women were explicitly

understood as gendered and sexed subjects. The chapter examines the gendering of the women as subjects under the law and within the criminal justice system. The notion of the gendered subject used herein is heavily enmeshed with the concepts of ideal womanhood, or what Simone de Beauvoir described as the 'eternal feminine.'[19] This aspirational ideal was also understood by reference to other markers of identity, such as the construction of women as classed subjects. The women herein, by virtue of their social class, their rural locales and further compounded by their status as convicts, were precluded from the status of 'ideal women'. The standards of ideal femininity remained the high watermark yet were unattainable for the women herein. The concept of the sexed subject is also explored in this chapter, particularly as it related to prevailing social norms on the expressions of female sexuality which existed in contemporary Irish society. Appropriate femininity was understood as sexually passive. Deviation from this could see women depicted as masculine, or as dangerously and pathologically sexual. Alternatively, sexuality was also associated with gullibility and weak-mindedness, but it was not accepted as a natural component of female identity.

Condemned Women in Context

In seeking to examine and analyse the cases of the 25 condemned women, this thesis has entailed significant engagement with literature from diverse disciplines, reflecting the interdisciplinary nature of the research.[20] Indeed, such a thesis would not be possible without recourse to studies from within history, sociology, gender studies, law, legal history and criminology. This literature has provided foundations for the deconstruction of the archival material, in order to 'read' the cases, and to aid the researcher in situating the cases of condemned women within an Irish context. The thesis has therefore attempted to situate the cases of capitally convicted women within the cultural and social context of post-Independence Ireland.

The cases of the 25 condemned women examined herein may be analysed and read as markers of their time and place. In this way, as Seal has observed, the cases of women who

[19] Simone de Beauvoir, *The Second Sex* (1949/1997 Vintage).
[20] And contributing to a project which requires studies of social control to look beyond the familiarity of their own discipline's writings to achieve greater insight, see Allen E Liska (1997) 'Modelling the Relationships Between Macro Forms of Social Control', *Annual Review of Sociology*, 23, 39-61.

kill can be interpreted according to the discourses of gender, but can also be placed in a cultural context which explores their meanings for wider society.[21]

The cases therefore reflect issues such as the power and influence of religion, the Irish reliance on institutional confinement in the twentieth-century, and the retrenchment of the position of women which occurred following Independence. Interpreted in the context of post-1922 Ireland, the cases can expose the normative limits for all women in Ireland during this period, indeed the lived experience of women within the sample demonstrated the very 'ordinary' nature of the lives lived. Analysis of the cases illustrates the strictly policed identities which were considered acceptable, particularly those of wife and mother. Beyond this, the devalued identities noted within the thesis are those constructed through discourses of illegitimate motherhood, sexual deviance, feeble-mindedness, eccentric spinsterhood and masculinity. These devalued identities demarcated the boundaries of respectable womanhood for all women in Ireland; Seal has termed these the 'regulatory discourses of gender' which separate that which is acceptable from that which is not.[22] The cases of condemned women herein then, not only reveal how capital punishment was framed regarding the female condemned, they also suggest larger truths regarding the criminal justice system, society and societal boundaries for all women in this period.

Tropes of domesticity, motherhood, respectability, sexuality, masculinity and pathology emerged throughout the thesis; these themes manifested according to particularly Irish currents of paternalism. These tropes are familiar from the typologies identified in the explanations of women who kill;[23] such typologies demonstrated how women were explained according to stereotypical assumptions. The research herein therefore adds peculiarly Irish typologies of women who kill, offering an international comparator. For example, the women within the sample were often constructed according to a dichotomous classification of 'criminal' or 'sinner'. Women were differentiated according to their sexual purity, creating the seemingly anomalous position that women who killed adults, often for personal gain, could be viewed as more deserving of eventual release. However,

[21] Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010).
[22] ibid at 83.
[23] See the typologies offered by, for example, Anne Worrall, *Offending Women: Female Lawbreakers and the Criminal Justice Systems* (Routledge 1990); Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000); Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010).

young women who had killed their illegitimate infants were viewed as 'sinners', and were considered to be suitable candidates for conditional discharge to Magdalen Laundries. As noted in Chapter Seven, this categorisation therefore informed the period of time women spent coercively confined and, in particular, where they were coercively confined. The use of this typology reveals social anxieties, evident for example in the 'moral panic' over illegitimacy in the late 1920s during which time a fledgling State attempted to consolidate a national image of womanhood steeped in purity.

The thesis has also attempted to show the importance of class in the construction of condemned women. Class pervaded understandings of the women and served to illustrate the urban/rural divide in Ireland; it therefore contributes towards Mary McAuliffe's project of incorporating greater cognisance of class, and urban/rural issues into Irish women's history.[24] As noted by Seal, an intersectional approach is vital in recognising the multiple subjectivities occupied by women and how these shaped the discursive construction of the women.[25] In her account of women executed in England and Wales, Anette Ballinger too adopted an intersectional approach 'to locate these women within the structural categories of social class, gender and sexuality and the material and ideological impact of these structures on their everyday lived experiences – their life histories.'[26]

The thesis has shown that the women sentenced to death in Ireland post-Independence were marginalised and lacked power and influence. They were drawn from the lower socio-economic classes and most were described as belonging to the 'labouring classes'. Many were economically dependent on their family for survival, few had any legal interest in land or property, and few had the formal training which would have qualified them for skilled work. Employment for most of the women therefore meant domestic work, either outside the home as domestic servants or in the family home without remuneration. In this way, their roles were constructed around domesticity. Indeed, for women of the 'labouring class', their productivity was noted throughout as an indicator of their worthiness for citizenship, and such concepts informed decisions on release from prison, from religious-

[24] Mary McAuliffe, 'Irish Histories: Gender, Women and Sexualities', in Katherine O'Donnell and Mary McAuliffe, eds, *Palgrave Advances in Irish History* (Palgrave 2009).
[25] Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010).
[26] Anette Ballinger, *Dead Woman Walking: Women Executed in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000) at 5.

run institutions, and in the case of Elizabeth Doran, from the Criminal Lunatic Asylum.[27] The refined standards of genteel femininity were closed to such women. This was evident, for example, in the case of Mary Moynihan, when neighbours criticised her inability to take on and defend herself against the male assailant who Mary claimed had killed her employer.[28] This demonstrates the centrality of intersectionality in understanding how women who kill are constructed; both Moynihan's class, and her position as a 'rural' woman, informed her discursive production.

Demonstrating the rural nature of the profile, a number of the women worked as labourers or on the family farm in rural Ireland. Indeed, rural Ireland, and particularly the West of Ireland, emerged from the research as a place 'Othered' and mythified by the Dublin legal professionals and in press reporting. Those women who lived in Dublin had a greater degree of officially recognised qualifications and occupied more professional roles. However, these women had emigrated from rural Ireland to Dublin, further underlining the lack of opportunity for such women in their local communities. The rural profile of the women was also apparent in the imperatives of rural fundamentalism which were evident in the cases,[29] from the motivation to kill premised on land and inheritance,[30] and in the attitudes to illegitimacy. Attempts to grapple with this alien, unknown Ireland exposed the cultural clash between the lived experience of many of the women and the experience of the legal professionals involved in their cases. The rural profile of the killings committed by capitally convicted women was also reflective of the rural nature of murder for much of the twentieth-century in Ireland.[31]

The cases also reveal the denial of individuality in these rural communities post-Independence. What was 'known' about the women within the sample was inseparable from that which was 'known' about their families. This was most apparent in Garda

[27] NAI Department of Justice 234/1297.
[28] NAI CCA 17/1924.
[29] Damian Hannan and Patrick Commins, 'The Significance of Small-scale Landholders in Ireland's Socio-economic Transformation, in JH Goldthorpe and CT Whelan, eds, *The Development of Industrial Society in Ireland* (Oxford University Press 1992).
[30] This echoes previous research on homicide in Ireland, see, for example, Ciaran McCullagh (1991) 'A Tie That Binds: Family and Ideology in Ireland', *Economic and Social Review*, 22(3), 199-211; Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History*, 37(1), 53-74.
[31] As identified in the review of the literature, see John D Brewer, Bill Lockhart and Paula Rogers, *Crime in Ireland, 1945-95: 'Here be Dragons'* (Clarendon 1997); Ian O'Donnell (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History*, 37(1), 53-74.

Reports which revealed a reliance on unsubstantiated local knowledge; these Reports in turn informed decision-making at cabinet level. The women were therefore understood as appendages of their families, and were partially constructed according to local rumour. This was evident in the discussions of hereditary insanity, in condemnatory judgements of whole families as immoral, and in the informal allegations of previous wrongdoing associated with some women. Assessments of reprieved women's families also influenced their prospects for release from prison or from religious-run institutions; in this regard 'suitability' for release was tightly bound up with family respectability. The women herein were therefore interpreted and made legible through their wider families according to what was 'known' locally about them. This focus on the centrality of the family illustrates the suppression and unacceptability of individualism within post-1922 Irish society.[32]

Gendered Punishment

Punishment must be theorised with an awareness of gender.[33] Indeed, gender plays a role throughout the criminal law, the criminal justice system and the practice of punishment.[34] This thesis has argued that an analysis of capital punishment in post-Independence Ireland must be grounded by a gendered approach. Through its focus on the cases of women sentenced to death, the thesis has demonstrated that the gender of female condemned contributed to their eventual outcomes.

This argument is not new, current scholarship in the US has touched on this, as outlined in Chapter Two, and the weight of comment from academics *and* the Supreme Court in that jurisdiction appears to accept that the death penalty operates in a heavily gendered way, to the disadvantage of males.[35] The thesis has surveyed the theories proposed to explain the gender differential in capital punishment which sees women more often the objects of

[32] See, for example, Lindsey Earner-Byrne (2008) 'Reinforcing The Family: The Role of Gender, Morality and Sexuality in Irish Welfare Policy, 1922-1944', *History of the Family*, 13, 360-369; Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).
[33] Mary Bosworth and Emma Kaufman, 'Gender and Punishment', in Jonathan Simon and Richard Sparks, eds, *The Sage Handbook of Punishment and Society* (Sage 2013).
[34] Carol Smart noted differentiation based on gender and marital status in the roster of offences, as well as in the available defences and the legal understanding of victimhood; citing infanticide, marital coercion, and the reluctance to criminalise marital rape, Carol Smart, *Women, Crime and Criminology* (Routledge and Kegan Paul 1977).
[35] See the comments of Justice Thurgood Marshall in *Furman v Georgia*, 408 US 238 (1972), discussed in Andrea Shapiro (2000) 'Unequal Before the Law: Men, Women and the Death Penalty', *Journal of Gender, Social Policy and the Law*, 8(2), 428-470.

formal mercy. These theories proposed a combination of the 'chivalry' and 'evil women' arguments, whereby *most* women benefited from an unwillingness to inflict punishment on 'the weaker sex'. However, harsher criminal justice responses were experienced by women who could not be accommodated within normative templates of femininity.[36] Analyses of cases of women who kill demonstrates how the concept of femininity is strategically deployed in the courtroom narrative by both defence and prosecution counsels.[37] Gender is used to 'read' the culpability of women who kill in a way that is not generally the case for men who kill. Inevitably, the same is true in capital cases, and such judgements therefore feed into the treatment of condemned women.[38] As noted in Chapter One, the incorporation of such criteria of judgement for women who kill also partially relates to the rarity of such cases and the subsequent drive to explain aberrant behaviour through readily understood stereotypes. The exceptional status of women who kill also means that women sentenced to death are less at risk from the inherent danger of being forgotten, their cases less likely to become 'fungible'. Lorraine Schmall argued that condemned women will therefore prompt greater interest, further contributing to the gender differential in the numbers of men and women executed.[39] That gender contributes to how condemned women and women who kill are judged would therefore seem to be a pertinent area of study. However, despite the centrality of the gender differential in capital punishment across jurisdictions and time periods, many death penalty researchers fail to address it at all.[40]

The incorporation of women and a recognition of gender, into analysis of the death penalty is particularly pertinent in an Irish context due to the tradition within Irish historiography to concentrate on the lives of men engaged in political and revolutionary history, which has

---

[36] Jessica Salvucci (2011) 'Femininity and the Electric Chair: An Equal Protection Challenge to Texas', *Boston College Third World Journal*, 31(2), 405-437; Jenny E Carroll (1997) 'Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice', *Texas law Review*, 75(6), 1413-1453.

[37] Liena Gurevich (2008) 'Patriarchy? Paternalism? Motherhood Discourses in Trials of Crimes Against Children', *Sociological Perspectives*, 51(3), 515-539.

[38] Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000); Victor L Streib, *The Fairer Death: Executing Women in Ohio* (Ohio University Press 2006); Mary Welek Atwell, *Wretched Sisters: Examining Gender and Capital Punishment* (2nd ed, Peter Lang 2014).

[39] Lorraine Schmall (1996) 'Forgiving Guin Garcia: Women, the Death Penalty and Commutation', *Wisconsin Women's Law Review*, 11(2), 283-326.

[40] See Ballinger's critique of this approach in Anette Ballinger (2012) '"Clear-Eyed Description and Objective Analysis": A Peculiar History of the Death Penalty', *British Journal of Criminology*, 'A Symposium of Reviews of *Peculiar Institution*', 52(1), 202-216.

manifested in a tendency to imagine capital punishment as a penalty experienced by men and inflicted for subversive offences.[41] The understanding that capital punishment was not 'for' women was explicit in the rationales put forth for the reprieve of women sentenced to death, as presented in Chapter Six.

However, such a comprehensive analysis of gender has been lacking from the few previous accounts of capital punishment in Ireland which exist.[42] This thesis has focused only on those cases of women sentenced to death, in order to restore women more fully to this history. The thesis therefore seeks to present an alternative history of capital punishment in Ireland which considers only the cases of women, often forgotten within a punishment that was used predominantly against men. The thesis consequently contributes to the perennial debate regarding the gender differential in punishment and the gendered nature of capital punishment. Gender inevitably informs notions of punishment, however, through consideration of the subject of punishment as default 'male' and therefore lacking in 'gender', such considerations and perspectives for analysis can be eclipsed.[43] However, the thesis has demonstrated that the stories of condemned women serve to explode this myth of genderless punishment.

The research herein has therefore proceeded from the finding that the gender differential in commutation of death sentence was one of the most notable features of capital punishment in post-Independence Ireland.[44] The research has explored this differential, and elaborated on the means by which gender informed the punishment of women. Indeed, as noted earlier, mercy was the watchword for women condemned to death in this period. Analysis of the archival material revealed that women were often granted mercy simply because they were women. The argument was made that in some of these cases, gender may have been the only feature of the case which drew appeals for commutation.

---

[41] As noted in Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006).
[42] See, Gerard O'Brien, 'Capital Punishment in Ireland, 1922-1964', in NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006); David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independent Ireland', *Journal of Legal History*, 33(1), 65-91; David M Doyle and Ian O'Donnell (2014) 'A Family Affair? English Hangmen and a Dublin Jail, 1923-1954', *New Hibernia Review*, 18(4), 101-118; David M Doyle (2015) 'Republicans, Martyrology, and the Death Penalty in Britain and Ireland, 1939-1990', *Journal of British Studies*, 54(3), 703-722.
[43] Ngaire Naffine, *Feminism and Criminology* (Polity 1997).
[44] As noted by David M Doyle and Ian O'Donnell (2012) 'The Death Penalty in Post-Independent Ireland', *Journal of Legal History*, 33(1), 65-91.

Within this finding, the exceptional case of Annie Walsh (1925) was examined.[45] Following Ballinger, the question is asked whether Walsh's crime was 'the worst of the worst', and whether this secured her fate. It is not, of course, possible to subject Walsh's crime to some notionally objective standard of 'reprehensibility'. However, the analysis herein suggested that Annie Walsh was executed partly because she deviated from the ideal standards of womanhood. Ballinger analysed the cases of the 15 women executed in England and Wales in the twentieth-century and found that women were condemned more for their failure to adhere to notions of sexuality, respectability, domesticity and motherhood, and that these standards often played a greater role than the circumstances of the killings they committed.[46] Annie Walsh's case also allowed for 'discourses of dangerous womanhood' to become part of the narrative; she presented an unsympathetic figure who was constructed as dominant, mercenary, manipulative, masculine, overtly sexual and engaged in an affair with a younger man. Further, Annie Walsh had killed her husband, something which had historically been considered as a subversive killing, representing rebellion against the social order. Women who killed adult men were most to be feared in a patriarchal society. In this manner, judicial misogyny can supplement judgements on women who are constructed furthest from the standards of ideal womanhood.

Related to this assumption of mercy for *most* women, is the particular profile of the capital crimes committed by women post-1922. As outlined in Chapter Five, the majority of women sentenced to death in Ireland in this period were capitally convicted for infanticide. The position of women in society therefore contributed to the creation of a 'typical' capital crime for women. In this context also, as Carol Smart contends, the introduction of infanticide legislation offers further evidence of the gendered nature of the criminal law.[47] The Infanticide Act 1949 represented a milestone of huge importance in the alternative history of capital punishment, as a key legislative development relevant only to women. Relating to the special status of motherhood, the construction of women as mothers throughout infanticide trials also demonstrates that gendered templates are used to assess culpability. Chapter Five illustrated the diminished role of the father in cases of infanticide,

[45] NAI CCC Limerick 1925 1C-90-14; Department of Justice H1004/275.
[46] Anette Ballinger, *Dead Woman Walking: Women Executed in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000).
[47] Carol Smart, *Women, Crime and Criminology* (Routledge and Kegan Paul 1977).

such as in the case of Ellen Keogh, who was consistently identified as the mother of the infant victim, while John Mitchell was not similarly identified as the father.[48] The vaunted status of women as mothers was also evident in the incorporation of motherhood in pleas for mercy on behalf of those condemned women who had living children, evident, for example, in the case of Jane O'Brien.[49]

Normative gender roles were therefore evident in how women were constructed throughout the criminal trial. Multiple processes worked to render each of the 25 death-sentenced women herein as explicable subjects. The discourses which constructed these women were informed by their gender. That gender informed the construction of the women as comprehensible is evident from the previous chapters which dealt with the areas of infanticide, mercy, confinement, pathology and appropriate femininity. As noted with reference to Annie Walsh (1925), Ballinger found that what was 'known' about women, and traditional discourses of 'womanhood', informed the judicial misogyny of the courtroom.[50] The case of Hannah O'Leary illustrates further how this judicial misogyny operated, and how assumptions of women as domestic and inherently passive contributed to Hannah's reprieve.[51] Although jointly convicted with her brother Con for the murder of their eldest brother, traditional discourses of womanhood suggested that Hannah had played the submissive part while Con had taken the active role.

Judicial misogyny also drew heavily from standards of sexuality, and there was evidence throughout the archives that perceived sexual immorality was punished. The role of sexuality was noted in the case of Annie Walsh, (1925), and has been noted in cases from other jurisdictions also, for example in the suspicion that Edith Thompson was ultimately executed in 1923 in England because of her infidelity, despite doubts about her role in the murder of her husband.[52] Considerations of sexual purity also contributed in other ways to the punishment of women however. For example, it was evident that national-level concerns regarding morality and in particular, the sexual purity of young women,

[48] See, for example, 'Westmeath Labourer on Trial' *Irish Independent* (25 April 1944); 'Mother on Murder Charge' *Irish Press* (April 28 1944).
[49] 'Sentence of Death' *Irish Times* (9 June 1932).
[50] Anette Ballinger, *Dead Woman Walking: Women Executed in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000).
[51] NAI CCA 18/1925. Trial Judge's Charge to the Jury.
[52] See Harry Potter, *Hanging in Judgment: Religion and the Death Penalty in England from the Bloody Code to Abolition* (SCM 1993) at 121, and Lizzie Seal, *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory* (Routledge 2014).

motivated more punitive treatment for some of the reprieved women herein. In this vein, the Department of Justice recommended that Mary Kiernan remain an additional three months in prison because she had given birth previously to an illegitimate infant.[53] It was therefore evident that moral panic regarding illegitimacy in the late-1920s facilitated a punitive campaign targeted against female immorality; the capital conviction of Deborah Sullivan, who had become pregnant as a result of rape, during this period, can be interpreted as an expressive punishment in this regard.[54] Concerns about female morality therefore had tangible material consequences for women appearing before the courts during this time and could lead to a harsher criminal justice response. The 1956 case of Mamie Cadden also offers an opportunity to 'read' a conviction as a statement of societal revulsion related to matters of female sexuality and morality.[55] The great lengths to which the State went to convict Cadden are indicative of the weight of moral opprobrium provoked by her provision of backstreet abortion services.

Furthermore, the research herein has also argued that the death penalty in Ireland post-1922 must be understood as gendered in order to incorporate the treatment of reprieved women, beyond the formal site of the prison. The resort to the use of semi-penal sites for 11 of the women has demonstrated that responses to reprieved women were framed by the cultural currency of gender. Under a paternalistic concept of the status of women, prison was considered an unsuitable environment; something which is considered further below.

This thesis has therefore demonstrated that women were understood according to judgements about them *as* women. This manifested in the dominant discourses which shaped the representations of women during the criminal trial, and also dictated the punishment experienced by women. In this regard, the thesis has found, both, that rationales for mercy were proposed for women *qua* women, and that, related to this, women were also punished *as* women. This analysis contributes to the argument that punishment is, unavoidably, a gendered phenomenon.

[53] NAI Department of Justice 234/1491. Memorandum, February 1927.
[54] NAI Department of Justice 234/2590.
[55] NAI Department of An Taoiseach S.16116; Department of Justice 18/3562.

Coercive Confinement

The thesis contributes to the broader debate on the use of coercive confinement in Ireland following Independence. The research has sought to conduct an analysis of women and capital punishment within the context of this literature. This trailblazing work, much of it involving a painstaking process of recovery, exposed the processes which saw large numbers of persons coercively confined in Ireland during this period, and the deprivations and abuses perpetrated on such confined populations.[56] The findings herein can be situated within this literature. The research therefore sheds light and offers necessary critique on the processes which led to women being confined coercively for long periods of time following commutation of a death sentence.

The literature has demonstrated high levels of institutional confinement in post-Independence Ireland, and the extensive use of carceral institutions to control 'unruly' populations.[57] As Eoin O'Sullivan and Ian O'Donnell note, the use of the concept of the 'carceral archipelago' is not new,[58] however it provides an alternative means of thinking about punishment. In the current instance, the use of this concept provides for a more nuanced understanding of women and capital punishment than that argued previously. In O'Sullivan and O'Donnell's coercive confinement thesis, Victorian and Catholic Church teachings on gender and morality mapped onto the imperatives of the rural economy post-Famine, cementing the importance of the family farm and the rigid requirements of prolonged celibacy and high marital fertility.[59] The high levels of institutionalisation in Ireland, the authors argue, are only partially explained without an integrative theoretical framework which incorporates the influences of Church, State and family, while also admitting the importance of ruralism. The research herein has argued that reprieved women were subject to the same processes of institutionalisation, identified by O'Sullivan

[56] Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999); James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008); Final Report of the Commission to Inquire into Child Abuse, the 'Ryan Report' (Stationery Office 2009); Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).
[57] See, for example, Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012); Damien Brennan, *Irish Insanity, 1800-2000* (Routledge 2014).
[58] Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Penguin 1979).
[59] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012). See also Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).

and O'Donnell, which governed the treatment of vulnerable persons, particularly women and children,[60] in post-Independence Ireland, and which conspired to create a distinctly gendered system of social control.

The use of coercive confinement for reprieved women illustrates the importance of an understanding of punishment as gendered, as outlined above. The thesis offers a unique perspective on the use of the death penalty in Ireland post-Independence in its argument that it was paternalism, grounded in a patriarchal conception of gender relations, rather than chivalry or mercy, which saved women from the noose. This same paternalism governed the treatment of these women post-reprieve, ensuring that many spent lengthy periods in prison or in a religious-run institution. Accounts of punishment which explore only the formal confines of the prison obscure the importance of semi-penal sites and the means by which deviant populations are subject to control outside the prison walls.[61] The current thesis seeks to address this lacuna through incorporating the means by which alternative sites of coercive confinement were used for reprieved women. The research therefore explicitly joins this cohort of women to the Irish coercive confinement thesis,[62] while the incorporation of disposal post-reprieve allows for a broader definition of punishment to enter discussion.

The thesis has also argued that the use of these religious-run institutions can be interpreted as an extension of the punitiveness of the prison, and that these institutions can therefore be considered as semi-penal. That reprieved women experienced their periods of detention in these sites as involuntary supports this argument. The reprieved women in the sample who were released from prison to a religious-run institution were released explicitly on this condition of entry to a 'Home'. Failure to acquiesce to this condition would have prolonged their imprisonment. Once confined in these institutions, most women understood their confinement as compulsory, this is evident in the extant records which revealed that women asked, but were refused, release; Mary Anne Keane, for example, was

[60] See, for example, Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999); James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008).
[61] See, for example, Mary Bosworth's research on immigration detention centres which brings a new understanding of punishment to the table, Mary Bosworth (2012) 'Subjectivity and Identity in Detention: Punishment and Society in a Global Age', *Theoretical Criminology*, 16(2), 123-140.
[62] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).

repeatedly denied release from the Sisters of Charity Magdalen Laundry in Donnybrook.[63] Further, the literature which has emerged on these semi-penal sites appears to confirm this interpretation.[64] The deaths of reprieved women in these institutions and the unknown outcomes for others, demonstrate that assumptions of 'mercy' and 'leniency' must be interrogated in light of the use of sites of confinement beyond the prison.

The thesis therefore forms part of a wider debate in Ireland which has sought to understand the use of institutional confinement.[65] Within this debate, the contested role of the State and the intentions of the Catholic Church, have been particularly considered. The thesis therefore contributes to this on-going negotiation of meaning on the use of institutional confinement.

Of particular relevance to the research herein, the McAleese Report, published in 2013, prompted discussions on the use of Magdalen Laundries as sites of coercive confinement. The McAleese Report presented an alternative narrative to that argued within this thesis, frequently presenting the Laundries as a benign system of refuge.[66] However, the research herein argues that the use of religious-run institutions for reprieved women means that such sites must be understand as extensions of the criminal justice system. The thesis has also illustrated the lacuna of representation, through the as yet unexplored detention of women in sites beyond the Laundries, such as in Henrietta Street and in the Bethany Home.

[63] NAI Department of Justice 18/3540.
[64] James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008).
[65] The emerging literature on the use of coercive confinement for vulnerable persons in Ireland post-1922 has led to numerous official inquiries into various aspects of State involvement and practices. In 2015, the Commission of Investigation into Mother and Baby Homes was announced and the Redress for Women Resident in Certain Institutions Act was passed.
[66] Indeed, criticism from survivor/advocacy groups has also called into question the narrative of the Report. See, Justice for Magdalenes, 'A Critique of Chapter 16 of the Report of the Inter-Departmental Committee to Establish the Facts of Statement Involvement with the Magdalen Laundries' (JFM Research 2015). While this critique deals primarily with 'death, institutionalisation and duration of stay', the document also critiques the failings in the use and presentation of statistics within the Report. The scope of the Report was also criticised. Further, the Report pitted two sides against each other, one of which, the narrative of the survivors, was fragmentary and dispossessed. Although the language used throughout was ostensibly neutral, its very neutrality often gifted the 'official' and established version of events to the voices of those from religious orders and congregations. Finally, agreements made regarding access to archival material held by religious orders and congregations maintain an on-going barrier to future research. Access was restricted to State researchers on the proviso that all materials would be returned and copies destroyed; this prohibits the possibility that the facts and findings of the Report could be subject to further scrutiny.

While the McAleese Report noted referrals to Magdalen Laundries under the Penal Servitude Acts, the route by which reprieved women entered these sites, the Report does not state that release under these terms was not legally conditional on entry to a 'Home', although this was how the procedure was presented to reprieved women. The Report does not explore this informal coercive power or how women were misled regarding the nature of confinement in these sites. Instead, the Report noted that women referred from the criminal justice system 'were made aware of why they were there and – in the case of court referrals – how long they were required to stay', however as noted earlier, this was not the case for the reprieved women herein.[67] Indeed, as demonstrated in Chapter Seven, reprieved women were informed that their eventual release from a 'Home' was predicated on their behaviour, but in practice this was frequently not the case, and women could remain in detention for the rest of their lives.

In addition, the constant drive to historicise the use of Magdalen Laundries had the effect of rendering the Irish State post-Independence as the hapless inheritor of a system; in this manner the State was absolved from responsibility. However, the disposal of reprieved women in such sites demonstrates that following Independence semi-penal sites became a definite tool in responding to female criminality, one which was expressly a creation of the new State.[68]

Karen Brennan has questioned the rationale driving the institutionalisation of women convicted of infanticide offences post-Independence. Brennan concludes that we cannot 'determine judicial perceptions' regarding the use these sites of confinement.[69] It suggests patriarchal ideology, but one cannot be certain about this; instead, pragmatic considerations regarding available options could have played a part. Further, such responses *may* have been motivated by fears for female morality. Brennan notes that internationally, the semi-penal detention of women has 'served myriad objectives

[67] Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013) at 3.
[68] This was also noted by Raftery and O'Sullivan in their work on Reformatory and Industrial Schools, Mary Raftery and Eoin O'Sullivan, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999) at 17.
[69] Karen M Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35, at 33.

including punishment, reform, protection, containment, and "feminisation" of both criminally and socially deviant women.'[70]

The thesis has also located myriad discourses governing the use of 'Homes', such as punitivism, reform, deterrence, and benevolence.[71] However, the thesis has argued that strands of punitivism are evident in the confinement of reprieved women in religious-run institutions. Further, as noted by Brennan[72] and by O'Sullivan and O'Donnell,[73] regardless of intentions, it is clear that many women experienced their confinement in religious-run institutions as punitive. As O'Sullivan and O'Donnell noted, 'While many of these institutions may have had an ostensibly welfarist – as opposed to penal – rationale, both their orientation and the experience of those confined in cells and dormitories or on wards suggest that, in the main, they were *felt* as punitive.'[74]

The thesis herein therefore concludes that while in some cases there was evidence of benevolent intentions it is also the case that the archival material demonstrates that punitivism was a feature of the use of religious-run institutions for reprieved women. The contradictory understandings and purposes of confinement in religious-run institutions can be noted in the case of Elizabeth Edwards. The Department of Justice, in their recommendation that Elizabeth should remain in Henrietta Street, was quick to state that this was not 'actuated by a desire to impose further punishment… but to afford her protection'.[75] However, when considering Elizabeth's case that same month, the Reverend Mother recommended her release on the view that 'the girl has now been sufficiently punished.'[76] Punitivism can also be discerned in the discursive indicators present in the

[70] ibid at 35.
[71] The official actors and organisations which formed part of the narrative of condemned women's lives must be understood according to this multiplicity of motivations. The thesis has shown that multiple strands of intention and rationale underpinned the coercive confinement of reprieved women. This conception of the State is in line with a poststructuralist understanding of power which queries the notion of the State as a monolithic entity. See, Carol Smart, *Law, Crime and Sexuality: Essays in Feminism* (Sage 1995).
[72] Karen M Brennan (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.
[73] Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).
[74] ibid at 2. Emphasis in original.
[75] NAI Department of Justice 18/885A. Letter to Governor of Mountjoy Prison, 26 September 1938.
[76] NAI Department of Justice 18/885A. Report by Chief Wardress, 14 September 1938.

terminology used to refer to women in these religious-run institutions; numerous women in the sample were referred to as inmates while coercively confined in these 'Homes'.[77]

The Department of Justice's procedure for securing conditional discharge of reprieved women from prison to religious-run institutions appeared calculated to avoid punitive, or in their words, 'tyrannical, harsh or absurd' conditions being placed on the women.[78] However, these same measures also ensured that women's institutionalisation was not subject to scrutiny, something which contributed to an effective practice of indeterminate sentencing. This represented a form of social death, as many of the women who entered religious-run institutions simply disappeared.

The dissonance between coercive confinement and the notion of benevolence and leniency is particularly notable in cases of infanticide; two women capitally convicted of infanticide ultimately died in Magdalen Laundries, Elizabeth Hannon and Margaret Finn.[79] In the case of Elizabeth Hannon, who died in High Park Magdalen Laundry in Dublin, the Trial Judge noted in his confidential memorandum to the Minister for Justice that had Elizabeth been convicted of concealment of birth he would have sentenced her to just six months imprisonment.[80] The disparity between perceived suitability of sentence as outlined by the Trial Judge, and the actual outcome for Elizabeth, is representative of the hidden punishment of women whose treatment by the criminal justice system had traditionally been considered as lenient.

The thesis has demonstrated the extensive use of religious-run institutions for women who had their sentence of death commuted.[81] The research has pointed to the arbitrary nature of the coercive confinement of these women in such sites, and has argued that they must be understood as semi-penal. The women were held in these locations according to the judgements of those who were not vested with the statutory authority to make such

[77] NAI Department of Justice 234/1744. Letter from Kathleen Sullivan, Probation Officer, in which she refers to Mary Moynihan and Deborah Sullivan as inmates, 27 June 1932. Alternatively, those women such as Mary Anne Keane and Elizabeth Hannon were referred to as 'penitents' as they were resident in Magdalen Laundries.
[78] NAI Department of Justice 234/1744.
[79] Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013) at Chapter 9.
[80] NAI Department of Justice 234/2016. Letter from Justice Johnston, 12 December 1927.
[81] In contrast to the experience of reprieved women, many reprieved men were instead encouraged to emigrate. Ian O'Donnell, 'Deflecting the Law from its Course: Capital Punishment and Clemency in Ireland, 1923-1990' (32nd Hugh M Fitzpatrick Lecture in Legal Bibliography, Bar Library of Ireland, 1 December 2015).

decisions, often for very lengthy periods. The thesis has therefore argued for the need to conceive of punishment as existing beyond the prison. Although there were small numbers of women imprisoned post-1922, there were many more coercively confined in other sites.[82] This approach towards women convicted of murder demonstrates approaches to female criminality and the punishment of women that are explicitly gendered.

Paternalism and Patriarchy

The thesis has argued that contemporary understandings of gender justified differential approaches to punishment for women condemned to death and has further identified the use of semi-penal sites of coercive confinement for reprieved women. The thesis has drawn on the concepts of paternalism and patriarchy to explain these findings.

Paternalism is understood herein as the legal protections extended to women derived from their 'inferior' and 'different' status. The thesis addresses the concept of paternalism through the notion of mercy, and the assumption of chivalry, in the commutation of capital sentence for condemned women. The research has taken a critical feminist stance which problematises this mercy or chivalry; the thesis therefore contributes to the body of scholarship on the paternalistic treatment of women in the criminal justice system.[83]

The impact of paternalistic discourse can also be seen in the preference of informal social control measures for deviant women, as discussed in Chapter One. Paternalism, although ostensibly benevolent, can also justify much lengthier periods in detention for women, compared to men.[84] Such a philosophy envisages prison as particularly harmful for women, and proposes alternative sites of coercive confinement.[85] Evidence of this motivation was found in the research herein, for example in the response of the Secretary at the Department of Justice, Stephen Roche, to the prolonged imprisonment of Hannah O'Leary. Roche proposed a plan for the institutionalisation of female convicts beyond the prison

[82] Christina Quinlan, 'Women, Imprisonment and Social Control', in Deirdre Healy, Claire Hamilton, Yvonne Daly and Michelle Butler (eds) *The Routledge Handbook of Irish Criminology* (Routledge 2015).
[83] Carol Smart, *Women, Crime and Criminology: A Feminist Critique* (Routledge and Kegan Paul 1977); Susan Edwards, *Women on Trial: A Study of the Female Suspect, Defendant and Offender in the Criminal Justice System* (Manchester University Press 1984); Hilary Allen, 'Rendering them Harmless: The Professional Portrayal of Women Charged with Serious Violent Crimes', in Kathleen Daly and Lisa Maher, eds, *Criminology at the Crossroad: Feminist Readings in Crime and Criminology* (Oxford University Press 1998).
[84] Elizabeth F Moulds (1978) 'Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System', *Western Political Quarterly*, 31(3), 416-430.
[85] ibid.

stating that, 'I have often considered an Act to authorise their detention… not as punishment but as persons needing shelter and protection'.[86] This perfectly encapsulates the concept of paternalism which is at once ostensibly well-intentioned and controlling.

Kathy Davis considered paternalism 'a useful theoretical construct' by which to explore asymmetrical power relations.[87] In Davis's work, paternalism was 'a concept of power which combines the element of benevolence with the elements of dominance and subordination.'[88] This benevolence was expressed as coercive power, exercised for a woman's own good. This conception of paternalism accords with the findings herein in its position that coercion and benevolence are not mutually exclusive, as evidenced in the discussion of the use of semi-penal sites of confinement.

Although paternalism has occasioned favourable outcomes for individual women in the criminal justice system,[89] it has been defined by feminists as ultimately harmful because the protection afforded women is based on their presumed inferiority – akin to the position of children relative to adults; women are therefore 'less than' fully adult, when 'adult' is synonymous with 'male'.[90] This paternalism spared women's lives, but it cannot be read uncritically as leniency.

Paternalism is therefore evident in the mercy shown to condemned women herein. Successive Ministers for Justice and probation officers, among others, attempted to ameliorate the severity of the law for women. These attempts often invoked motivations that were seemingly benevolent, such as the desire to save women from hanging or to minimise the harsh effects of imprisonment. However, when the deeper rationalisations which underpinned these intentions are interrogated, benevolence as a motivating concept becomes more complicated; it is insufficient to declare that benevolent intentions motivated mercy, or indeed institutionalisation, without an attempt to explain this benevolence. Once this phenomenon is subjected to further investigation, it can be

[86] NAI Department of Justice 18/2770A. Memorandum from Stephen Roche to Minister for Justice, 20 May 1940.
[87] Kathy Davis, 'Paternalism Under the Microscope', in Alexandra Dundas Todd and Sue Fischer (eds) *Gender and Discourse: The Power of Talk, Vol. XXX* (Ablex 1988) at 23.
[88] ibid at 23.
[89] As noted by Carol Smart, the criminal law is generally understood as favourable to women as offenders, in Carol Smart, *Women, Crime and Criminology* (Routledge and Kegan Paul 1977).
[90] Elizabeth F Moulds (1978) 'Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System', *Western Political Quarterly*, 31(3), 416-430.

demonstrated that such interventions on behalf of women were often invoked by a paternalistic view of gender relations.

The concept of paternalism used herein is located within an understanding that society is patriarchal. Patriarchy is understood as a gendered and hierarchical social order in which the 'masculine' is afforded a superior status. Walby defines patriarchy as 'a system of social structures and practices in which men dominate, oppress and exploit women.'[91] This hierarchy necessarily creates an inferior subject position, held by women. Paternalism is that protection which flows to *some* women based on their inferior position.[92]

The concept of patriarchy has been contested, prompting feminist writers to dispute the criticism that it suggested biological essentialism.[93] Writers such as Gerda Lerner and Sylvia Walby have convincingly argued for a system of social relations in which patriarchy was an historically contingent phenomenon.[94] Walby writes that 'the concept of "patriarchy" is indispensable for an analysis of gender inequality',[95] and she challenges the claim that the concept of patriarchy is 'essentialist, ahistoric'[96] by showing how patriarchal structures have persisted through change. Smart too stresses that while the concept has been much theorised and argued over, its relevance within a feminist or gendered analysis of social phenomena is key to exposing the oppressions experienced by women.[97] As a means of preserving the patriarchal structure of society, it is particularly important to critique the role of law. Within feminist analyses, the law and the legal system are therefore central to the maintenance of a patriarchal social order.[98]

---

[91] Sylvia Walby, *Theorizing Patriarchy* (Basil Blackwell 1990) at 20.
[92] However, the thesis has demonstrated that the effects of patriarchy and the concept of paternalism are stratified according to other indicators of identity, such as class. In this way, intersectionality must be understood as a feature of gender relations.
[93] Carol Smart, 'Legal Regulation or Male Control?', in Carol Smart (ed) *Law, Crime and Sexuality: Essays in Feminism* (Sage 1995).
[94] Gerda Lerner, *The Creation of Patriarchy* (Oxford University Press 1987); Sylvia Walby, *Theorizing Patriarchy* (Basil Blackwell 1990).
[95] Sylvia Walby, *Theorizing Patriarchy* (Basil Blackwell 1990) at 1.
[96] ibid at 2.
[97] Carol Smart, 'Legal Regulation or Male Control?', in Carol Smart (ed) *Law, Crime and Sexuality: Essays in Feminism* (Sage 1995).
[98] Janet Rifkin (1980) 'Toward a Theory of Law and Patriarchy', *Harvard Women's Law Journal*, 83(1), 83-95.

Liena Gurevich used the twin concepts of paternalism and patriarchy in her work on the representation of maternal infanticides in the criminal justice system.[99] Gurevich considered these concepts as distinct and mutually exclusive gender management strategies; under this framework patriarchy was a more traditional concept in which power rested with individual men in the male-headed family and which rested on an assumption of essential sex differences. Paternalism was instead associated with a Foucauldian diffusion of power through State agencies.

However, the thesis herein contends that these concepts are not mutually exclusive. Indeed, Chapter Two demonstrated that paternalistic discourses have motivated decisions on women and capital punishment since at least the nineteenth-century. This questions the idea of paternalism as a 'new' or modern aspect of gender management. Paternalism can therefore be accommodated within the theorisation of patriarchy proposed by feminist theorists such as Walby and Lerner.

Within the Irish context, Evelyn Mahon, utilising Walby's typology of private versus public patriarchy, has argued that Ireland remained a private patriarchy for much of the period post-Independence.[100] Private patriarchy is characterised by the exclusion of women from the workforce, and the importance of women's household labour; Walby defines it as 'a man in his position as husband or father who is the direct oppressor and beneficiary, individually and directly, of the subordination of women.'[101] Mahon highlights the marriage bar in place to prevent married women participating in the workforce, combined with the effects of the constitutional protection afforded by Article 41.2 which states that 'the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.' The cultural importance of the Catholic Church in Ireland post-1922 also underpinned the idea of innate biological differences between the sexes and sustained the system of private patriarchy.[102]

The lived experience of the condemned women within the research herein demonstrates the impacts of these patriarchal structures on women's lives. Women were frequently made intelligible through their position in male-headed households. Even when they were

[99] Liena Gurevich (2008) 'Patriarchy? Paternalism? Motherhood Discourses in Trials of Crimes Against Children', *Sociological Perspectives*, 51(3), 515-539.
[100] Evelyn Mahon (1994) 'Ireland: A Private Patriarchy?', *Environment and Planning A*, 26(8), 1277-1296.
[101] Sylvia Walby, *Theorizing Patriarchy* (Basil Blackwell 1990) at 178.
[102] Evelyn Mahon (1994) 'Ireland: A Private Patriarchy?', *Environment and Planning A*, 26(8), 1277-1296.

unmarried, for example working as domestic servants or contributing labour to the family household, they were still confined within the private patriarchal structure of the family. Within private patriarchy, the concept of the male breadwinner and the 'family wage' was also central; within the cohort of condemned women, this discourse is evident in the condemnation expressed towards the husband of Mary Agnes Bernadette Daly who was criticised for his failure to provide and his wife's consequent resort to desperate measures.[103] The State too, as the holder of legitimate powers of coercion, also promulgated legislation which sought to preserve patriarchal power, such as its prohibition of abortion, contraceptives, and divorce, and its creation of employment restrictions for women.

Lindsay Earner-Byrne demonstrated the inferiority of women within this private patriarchal system by reference to the 1964 Limerick Survey which recorded that daughters were 'favoured by neither father nor mother and accepted only on sufferance.'[104] The exploitation of the labour of women was noted in the research herein, and was epitomised by the case of Mary Moynihan; Moynihan was hired out by her father who received her domestic servant's wage. Moynihan's labour, her domesticity, was under the control and for the benefit of her father.[105] This vulnerability can also be discerned in the treatment of women who were confined in religious-run institutions, in which their domesticity was exploited for the benefit of the religious orders and congregations through their work in the laundries.[106]

Within the private patriarchy which persisted for decades in Independent Ireland, women, by virtue of their position as inferiors in male-headed households, were treated with paternalistic condescension and protection. The role of paternalism is therefore particularly marked in Ireland. Of the 25 women sentenced to death post-1922, only one, or 4 per cent, was executed. To compare, Ballinger's research in England and Wales found that of 130 women sentenced to death between 1900 and 1950, a total of 12, or 9 per cent, were executed. Examination of the cases herein do not demonstrate that those murders committed by British women were more 'heinous' or deserving of punishment than those

[103] NAI Department of Justice 170/7622. Letter, unsigned, 28 November 1948.
[104] Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (IPA 2001) at 126.
[105] NAI CCA 17/1924. Evidence of Superintendent Peter Fahy.
[106] Noted for example in the comment that Deborah Sullivan 'continues to give satisfaction' regarding her work in the laundry of Henrietta Street, NAI Department of Justice 234/2590. Garda Report, 1 October 1931.

in Ireland. Instead, one explanation for this disparity can be located in the stronger, more embedded paternalistic conception of women in Ireland post-1922. The explicitly paternalistic discourses which advocated for differential treatment of women *qua* women were explicitly rooted in the private patriarchal system prevailing in Ireland during this time.

Conclusion

Through its reconceptualisation of women and capital punishment, the thesis offers a unique contribution to the emerging body of work on capital punishment in post-Independence Ireland, the punishment of women, and to the broader literature on women who kill. The thesis herein contributes to the argument that capital punishment must be understood from a critical gender perspective; through its problematisation of the assumption of mercy and chivalry, in its incorporation of alternative sites of confinement for reprieved women, and in the manner in which women before the courts were constructed according to gender norms borne of a paternalistic and patriarchal society.

The thesis has argued that consideration of how many women were executed versus how many were reprieved cannot provide a definitive statement regarding the operation of mercy. This alone cannot explain why, and on what grounds, mercy was extended to women. Instead, it is argued that the apparent leniency or 'mercy' experienced by many of the condemned women may be reinterpreted as paternalism. This experience of 'mercy' was mediated by the idiosyncratic Irish landscape of private patriarchy; the trends identified were tightly bound up with a particular form of Irish paternalism, related to notions of sexuality, informed by a moralistic culture and economic imperatives. Paternalism justified the differential treatment of women within the criminal justice system. Women were considered to be unfit subjects for execution because they were assumed not to have understood or intended the consequences of their actions. Alternatively, women were spared the death penalty because it was considered 'unseemly' to execute them. Women were therefore understood as an 'Othered' class apart, less than fully human, both idealised and reduced.

The thesis has also argued that paternalism governed the treatment of women post-reprieve as well. The thesis incorporated a gendered analysis of capital punishment to interrogate notions of 'mercy by gender', finding that through incorporation of post-reprieve disposals

of women, the assumption of mercy could be questioned and exposed as problematic. The research therefore incorporated the coercive confinement thesis into an understanding of women and capital punishment. Prison was viewed as an inappropriate environment for women, with the Department of Justice instead favouring the coercive confinement of women in religious-run institutions. However, as noted above, women often spent very lengthy periods confined in these semi-penal sites 'for their own good'. In light of the troubling nature of this 'leniency' it is argued that the mercy extended to reprieved women, understood as the shorter imprisonment periods served by some women, could equally be expressed as paternalism. As highlighted herein, this paternalism must further be situated with a broader understanding of Irish society as a patriarchal.

The thesis noted that the numbers of female prisoners dropped post-1922.[107] While this is partly attributable to falling crime rates, it can also be explained by reference to the determined efforts which were made to remove women from the formal confines of the prison. Moulds argued that the view of prison as unsuitable for women goes to the heart of the operation of paternalism in the criminal justice system.[108] The thesis has therefore contended that one cannot explain mercy for women *qua* women without recourse to paternalism. When prison is considered unsuitable for women, not by virtue of offence or offender characteristics, but by virtue of the offender's gender, it can be argued that paternalism is at play. Paternalism however is a complex concept; within the cases of condemned women it acted as *both* a motivation to commute their capital sentences *and* as a rationale for indeterminate detention.

Women and men are therefore punished differently. Indeed, the thesis demonstrated that the death penalty was understood as not 'for' women, rather the intended capital offender throughout was conceived of as male. In this vein then, punishment herein was understood as particularly gendered, both in the urge to commute death sentences for women, and in the preference of semi-penal sites for some reprieved women.

The extension of mercy to women *qua* women was thus, it is argued, motivated by a paternalism borne of gender relations which can be understood patriarchal. Ultimately, the

[107] Christina Quinlan, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011); Eoin O'Sullivan and Ian O'Donnell, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).
[108] Elizabeth F Moulds (1978) 'Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System', *Western Political Quarterly*, 31(3), 416-430.

exercise of this form of paternalism meant that those women who were condemned to death in post-Independence Ireland were punished differently, punished severely, and punished as women.

Appendix Women Sentenced to Death in Ireland Post-Independence					
Name	**Date of Conviction**	**Age**	**Location**	**Victim**	**Date of Crime**
Hannah Flynn	27 Feb 1924	28	Co. Kerry	Margaret O'Sullivan (former employer)	1 April 1923
Mary Moynihan	12 Dec 1924	22	Co. Cork	Nora Horgan (employer)	9 Sept 1922
Hannah O'Leary	30 June 1925	37	Co. Cork	Patrick O'Sullivan (brother)	26 Feb 1924
Annie Walsh	10 July 1025	31	Co. Limerick	Edward Walsh (husband)	25 Oct 1924
Elizabeth Doran	3 June 1926	40	Co. Wicklow	Own Infant	15 March 1926
Mary Kiernan	28 Oct 1926	22	Co. Westmeath	Own Infant	26 Sept 1926
Elizabeth Hannon	12 Dec 1927	30	Co. Westmeath	Own Infant	21 Aug 1927
Mary Lenihan	30 Nov 1928 (quashed 18 Dec)	67	Co. Cork	Infant great-grandchild	1 Jan 1928
Mary Anne Keane	10 June 1929	23	Co. Roscommon	Own Infant	2 March 1929
Deborah Sullivan	13 June 1929	21	Co. Kerry	Own Infant	14 Feb 1929
Annie Walsh	21 June 1929	42	Co. Galway	Sonny Dan Walsh (husband)	31 May 1928
Catherine Aherne	25 June 1929	26	Co. Wexford	Own Infant	30 March 1929
Christina Russell	27 Nov 1930	28	Co. Dublin	Own Infant	5/6 Sept 1930
Margaret Finn	3 March 1931	25	Co. Clare	Own Infant	17 June 1930
Jane O'Brien	8 June 1932	52	Co. Wexford	John Cousins (nephew)	26 March 1932
Elizabeth and Rose Edwards	28 March 1935	20 and 28	Co. Roscommon	Infant of Elizabeth	16/17 Oct 1934
Mary Somerville	15 Nov 1938	50	Co. Monaghan	Infant grandchild	11 July 1938
Kate Owens	22 Nov 1943	36	Co. Westmeath	Own Infant	7 April 1943
Ellen Keogh	29 April 1944 (quashed 16 June)	40	Co. Westmeath	Own Infant	8 Dec 1943
Agnes McAdam	15 Feb 1946	53	Co. Monaghan	James Finnegan (neighbour)	28 Sept 1945
Mary Agnes Bernadette Daly	29 April 1949	27	Dublin City	Mary Gibbons (unknown to Daly)	10 Aug 1948
Frances Cox	21 Nov 1949	30	Co. Laois	Richard Cox (brother)	29 May 1949
Mamie Cadden	1 Nov 1956	64	Dublin City	Helen O'Reilly (client)	17 April 1956
Marie Murray	9 June 1976 (quashed 9 Dec)	27	Dublin City	Garda Michael Reynolds (unknown to Murray)	11 Sept 1975

Appendix

Case Studies

Hannah Flynn

On Easter Sunday, 1 April 1924, Daniel O'Sullivan returned from church to find his wife Margaret O'Sullivan lying dead in the kitchen of their farmhouse; she had been attacked with such ferocity her face was no longer recognisable. Daniel alerted his neighbours and went for the local priest. The neighbours searched the house, and found a hatchet with traces of blood and hair. A forcibly opened trunk and missing money suggested robbery as the motive, there was also a brown shawl missing from Margaret's possessions.

Daniel and Margaret O'Sullivan owned a substantial farm in Co. Kerry. Margaret O'Sullivan, aged approximately 50 years old,[1] had previously employed 28-year-old Hannah Flynn as a domestic servant for a period of six months from April 1922. There was bad feeling between Hannah Flynn and the O'Sullivans however; Daniel O'Sullivan alleged that Hannah had been a difficult employee, whom they suspected of stealing. He referenced one particular incident in which Hannah had cut the tassels from a brown shawl which belonged to Margaret. For three weeks following her dismissal, Hannah had appeared at the house throwing stones at the door. She had also harassed Daniel as he transported turf, demanding to take the turf in return for unpaid wages; on another occasion Hannah had accosted Margaret O'Sullivan in the local village, causing Margaret considerable upset.

In Hannah's statement to Gardaí, she alleged that she had travelled by foot to Tralee the night before the murder to seek work. She stated that she had arrived in the town late at night and found lodgings, and in the morning, unsatisfied with the terms of employment offered, she had returned home on foot. However, she could not accurately describe her lodgings and no one could support her claims. Further, there was eye witness evidence which suggested she had been in the locality of O'Sullivan's house the night before and the morning of the murder. Primitive forensic evidence also pointed to Hannah; the boots Hannah habitually wore matched footprints leading away from the O'Sullivan's house.

Hannah Flynn was sentenced to death on 27 February 1924. She was strongly recommended to mercy by the jury and her sentence was commuted to penal servitude for life on 5 March 1924. Hannah Flynn spent almost two decades in Mountjoy Prison from where she was conditionally discharged on 23 October 1942 to the Good Shepherd Convent in Limerick.[2] Hannah Flynn left the Good Shepherd Convent in advanced years, and was transferred to a hospital in which she died a number of years later.[3]

[1] 'Woman Brutally Murdered' *Irish Examiner* (4 April 1923).
[2] NAI Central Criminal Court (hereinafter 'CCC') Kerry 1923 1C-79-22; Department of Justice 18/2769A.
[3] Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013).

Mary Moynihan

Twenty-two year old Mary Moynihan had been employed for five years as a domestic servant in the home of Nora and Jeremiah Horgan, in rural Co. Cork. On 9 September 1922, Jeremiah Horgan left home early to transport pigs to market. At 8am, the young labourer Jeremiah employed went to the creamery and Mary and Nora were left alone in the house. Daniel Cronin, passing the house at 10.30am, heard shouts for help from a woman he recognised as Mary Moynihan. He entered the house and found Nora Horgan lying bloodied and dead, with Mary Moynihan lying underneath her.

Mary's account told of a male intruder, and a struggle during which she had been thrown to the ground. She stated that when she had regained consciousness, Nora was dead. However, Mary's account of the male intruder raised eye-brows. During the investigation Mary named as the culprit a local postman who was soon found to have an alibi. Her claim that she had been pinned under Nora's body was rendered suspect by Daniel Cronin's evidence that he had heard her voice coming from the open front door of the house; significant elements of Mary's account were soon found to be confused and implausible. Instead, the prosecution offered jealousy as the motive. The prosecution attempted to show that Moynihan and Jeremiah Horgan had been having a sexual relationship and despite the Trial Judge's scepticism of the evidence for this, jealousy persisted in the minds of many as the motive. This was seemingly confirmed when, post-conviction, Mary denounced Jeremiah in the dock for his role in the killing, suggesting she had shielded him, and that he had 'forced' her into the murder.[4]

Mary Moynihan was sentenced to death on 12 December 1924. She was recommended to mercy and her sentence was commuted to penal servitude for life on 1 January 1925. Mary was conditionally discharged to the Sisters of Mercy, Henrietta Street, Dublin, on 18 July 1930 and in the summer of 1932 she was released to work in St. Philomena's in Stillorgan, Dublin.[5]

Hannah O'Leary

On 7 March 1924, a sack containing the head of a man was found under bushes in a field near Milltown in rural Co. Cork, a cursory search revealed other sacks close by, containing further body parts. When 40-year-old Con O'Leary, who lived nearby, was questioned about the whereabouts of his older brother Patrick, he told the Guards that Patrick had travelled to a fair 10 days ago and had not returned. When asked to identify the remains, Con at first confirmed that the deceased was his brother, but when asked a second time, he expressed himself uncertain. When the remains were taken to the public house, 37-year-old Hannah O'Leary likewise refused to identify the remains as those of her brother, relenting only when her sister Mary Anne was brought in to confirm that the deceased was in fact their brother Patrick.

[4] NAI Court of Criminal Appeal (hereinafter 'CCA') 17/1924.
[5] NAI CCC Cork 1924 1C-79-21; CCA 17/1924; Department of Justice 234/1744.

The prosecution alleged that Patrick O'Leary had been killed in his bed by hatchet blows to the head, and his corpse dismembered. The alleged motive was a family dispute motivated by money and resentment towards Patrick. The O'Learys lived on the family farm which had been willed to Patrick by his father in 1921. Hannah and Con were to be given lodging and maintenance for the duration of their life; however, the farm would pass to Patrick following the death of their mother. The local priest gave evidence that he had been asked to intervene in disputes caused by Patrick's refusal to hand over money earned from the sale of livestock.

Hannah O'Leary made statements in which she claimed Patrick had left home early on the morning of Tuesday 26 February to take a colt to be sold at the fair and had not returned. Con's statements also derived in large part from things he alleged he had been told by Hannah, for example that she had prepared Patrick's breakfast that morning. Neither Con nor Hannah could explain why the colt remained on the farm. The family refusal to report the disappearance of Patrick was also viewed as deeply suspicious.

Hannah O'Leary and her brother Con were jointly convicted on 30 June 1925. Initially, the entire O'Leary family had been arrested; however *nolle prosequi* was entered for their mother, due to her advanced age, while their sister Mary Anne died of cancer in prison while awaiting trial. Hannah received a partial recommendation to mercy and her sentence was commuted to penal servitude for life; Con, however, was executed on 28 July 1925. Hannah spent almost 20 years in prison, and was eventually conditionally discharged on 18 September 1942 to a religious-run institution, the Sisters of Charity at St. Vincent's Convent, St. Mary's Road, in Cork.[6] It is not known if or when Hannah was released from St. Vincent's Convent.

Annie Walsh

On 25 October 1924, 31-year-old Annie Walsh appeared at the Fedamore Garda station at 7.45am, claiming that her husband Edward, aged 60, had been killed the previous night, shot by his nephew, 23-year-old Michael Talbot. When asked why she had not reported the killing sooner, she said she had feared for her life. Annie Walsh was accompanied to her house, where the Guards found Edward lying in a pool of blood, fully clothed with his cap and boots on. Walsh claimed that at approximately midnight, she and her husband had been awakened by Michael Talbot, demanding entry. Annie claimed that Talbot had pushed in the front door, which had been bolted, breaking the door jamb in the process, and forcing them from bed. Walsh continued that her husband and Talbot had then spoken quietly for a time in the kitchen when suddenly Talbot had struck Edward on the head, and producing a revolver, had shot him.

Michael Talbot was apprehended in his mother's house, hiding in a loft compartment above the kitchen. When discovered, he said, 'You may arrest Mrs Walsh as well as me. I

[6] NAI CCC Cork 1925 1C-90-3; CCA 18/1925; Department of Justice 18/2770A and 18/2770B.

did not kill him. She killed him with a hatchet. I held his hands while she killed him.'[7] When the body of Edward Walsh was examined there was no trace of a bullet wound discovered, rather he had been killed by two heavy blows to the head with some instrument like a hatchet.

The prosecution suggested that Michael Talbot and Annie Walsh were having a sexual relationship. Annie had claimed that after shooting her husband, Talbot had held her down by the throat all night, preventing her from reporting the shooting to the Guards. Against this, Talbot had said that following the killing, Annie had asked him to stay the night. The suggested motive was therefore related to this relationship, but also, crucially, to financial gain. It was alleged that Annie had killed her husband to obtain compensation.

Annie Walsh was convicted of her husband's murder on 10 July 1925; Michael Talbot had been convicted in a separate trial the day before. Despite the jury's strong recommendation to mercy, Annie Walsh received no reprieve. On the morning of 5 August 1925, Annie Walsh was executed. The newspaper accounts of the execution reported that Walsh retired the night before at 11pm. It reported that both condemned were woken at 6.30am and washed and dressed. The prison chaplain ministered to Annie Walsh and she received Holy Viaticum at 8.15am before she was accompanied by Father MacMahon to the scaffold.[8] Both Walsh and Talbot were executed by Thomas Pierrepoint in Mountjoy Prison on 5 August 1925, Michael Talbot at 8am and Annie Walsh at 8.45am.

The record of the execution noted that death was due to a fracture of the fourth vertical vertebrae, caused by the drop of seven feet and seven inches. Annie Walsh left behind a key, a purse, her Post Office savings book containing a small sum of money, and her rosary beads.[9] These items, except for the savings book, were returned to Annie Walsh's sister, Norah Hayes, on request in the weeks following her death. Her sister had written:

> I did like to know did she say anything the morning she was going & I would feel awfully obliged for same & I was sorry I did not leave it a bit later for the visit but I thought she would not be going.[10]

Elizabeth Doran

Elizabeth Doran was sentenced to death for infanticide. Forty-year-old Doran was a widow with three grown sons, she worked as a farm labourer and lived in the village of Carnew in Co. Wicklow. Elizabeth had given birth to a male infant in the County Home in Rathdrum in Co. Wicklow on 3 March. When discharged on 15 March, she was accompanied to the train station by a nurse, and caught the train to Tinahely; Doran told Guards that as she walked home from Tinahely to the village of Carnew, she had strangled her infant:

[7] NAI CCC Limerick 1925 1C-90-14.
[8] 'Co. Limerick Murder' *Irish Examiner* (6 August 1925).
[9] NAI CCC Limerick 1925 1C-90-14; Department of Justice H1004/275.
[10] NAI Department of Justice H1004/275.

> I came on the train to Tinahely. I got out there and watched along the road. After a while I caught the child with my two hands by the throat and killed it. I then buried it in a sewer and came away.[11]

Following receipt of information regarding Elizabeth Doran's stay in the County Home, the Sergeant in charge of the Carnew Garda station questioned Doran on 16 March. Doran led the Guards to a field, and pointed out a freshly dug mound of earth where she had buried the infant. When the infant was found, he was partially wrapped in brown paper and had two pieces of string tied around his neck, one very tightly immediately under the chin which would have been sufficient to cause strangulation. Doran was charged there with the murder.

Elizabeth Doran was sentenced to death on 3 June 1926 for the murder of her male infant on 15 March. Doran received a strong recommendation to mercy and her sentence was commuted to one of penal servitude for life. On 24 July 1926, some weeks following her reprieve, Doran was certified insane and transferred from Mountjoy Prison to the Criminal Lunatic Asylum in Dundrum, Co. Dublin. Doran remained in the Asylum for five years and was released to the care of her grown sons on 7 May 1931.[12]

Mary Kiernan

Mary Kiernan was capitally convicted for the infanticide of her 12-day-old female infant. Mary Kiernan was 22 and unmarried when she gave birth to the infant in the County Hospital in Mullingar, on 14 September 1926. On 26 September, Kiernan left the hospital. One witness gave evidence that she had seen Kiernan walking along the road from the hospital towards Mullingar with an infant in her arms; it had been raining heavily but Kiernan had refused the offer of a lift in the pony and cart, stating it was not worthwhile as she intended stopping at the next house. Later that day, the same witness again saw Mary Kiernan walking without an infant. On the evening of the 27 September, Patrick Callaghan noticed a bundle in the canal, he fished the bundle to the edge of the water, on closer examination he saw it was an infant wrapped in a coat, the post-mortem showed that the infant had been alive when it went into the water. Mary Kiernan claimed that her infant had died as she took shelter by the canal bridge and that she had left it there. However, during the trial, Kiernan conceded that the child had been alive when she left it by the canal, in a 'dying condition almost dead'. She instead suggested that the infant had fallen into the canal after she had left. She further claimed while giving evidence that her head had 'went wrong'.

Mary Kiernan was sentenced to death on 28 October 1926 for the infanticide. Kiernan's case attracted considerable sympathy; the jury initially found her guilty but not responsible for her actions; however, following further directions from Justice O'Byrne they returned with a verdict of guilty with a strong recommendation to mercy. Kiernan's death sentence

[11] NAI CCC Wicklow 1926 1C-90-28.
[12] NAI CCC Wicklow 1926 1C-90-28; Department of Justice 234/1297.

was commuted to penal servitude for life on 8 November 1926; she was released unconditionally to her family on 30 April 1927.[13]

Elizabeth Hannon

Elizabeth Hannon was sentenced to death for the infanticide of her newborn infant. Elizabeth Hannon was 30-years-old, and unmarried; she had worked as a domestic servant to the Mitchell family in Robinstown for four years, in a rural area of Co. Roscommon. She had given birth to the infant alone, outside the Mitchell's house, and had disposed of the body in the adjoining sandpit. Mary Mitchell, the daughter of Elizabeth's employer, gave evidence that Elizabeth had gone to church at 10am, returning at 11.40am. She had complained of feeling unwell and went outside. When she returned, Mary instructed her to sit by the fire. However, Elizabeth continued to complain of feeling unwell and Mary sent her to bed. When Mary checked on Elizabeth, she was lying on top of her bed with her boots on:

> I made her take off her boots and when I pulled back the clothing I noticed there was something wrong. I did not know what had happened. I went down to the County Home and as a result of what I was told I came back and had Elizabeth Hannon conveyed to County Home in the ambulance.[14]

As Mary accompanied Elizabeth to the County Home, Elizabeth continued to deny that anything was wrong. Following information received from the examination of Elizabeth at the County Home, Gardaí conducted a search of the property and found the body of the male infant underneath some stones in the sandpit. The post-mortem suggested that the infant had probably been born alive, there was bruising on one side of the head and the skull was fractured, injuries which would have caused death.

In her statement, Elizabeth said she had given birth in the outside lavatory after returning from church, and that she had covered the infant with stones while it was alive. She added, 'I did it. I did not know what I was doing.'[15]

Elizabeth was convicted on 12 December 1927; she received a recommendation to mercy and her sentence was commuted to penal servitude for life on 17 December 1927. Elizabeth was conditionally discharged on 17 July 1930 to Our Lady of Charity Refuge in High Park, Drumcondra, Dublin.[16] Elizabeth remained in this institution until her death approximately 30 years later.[17]

---

[13] NAI CCC Westmeath 1925-1927 1C-90-26; Department of An Taoiseach S.5195; Department of Justice 234/1491.
[14] NAI CCC Westmeath 1925-1927 1C-90-26.
[15] NAI CCC Westmeath 1925-1927 1C-90-26.
[16] NAI CCC Westmeath 1925-1927 1C-90-26; Department of An Taoiseach S.5571; Department of Justice 234/2016.
[17] Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013).

Mary Lenihan

Mary Lenihan was convicted of the murder of her great-grandchild on 30 November 1928 and the jury recommended her to mercy on account of her age and circumstances. Lenihan was 67 years old; she was married to a labourer and lived in rural Co. Cork near Rochchapel. The infant was the child of her 18-year-old granddaughter Hannah, who had given birth on 1 January 1928. Hannah Lenihan had been in domestic service but had returned home in November.

On 13 February, the body of an infant had been found in a bog-hole approximately 400 yards from Lenihan's home, the internal organs had been removed through an incision made in the shoulder, the prosecution suggested this was to remove evidence the child had been born alive. Following discovery of the body, Gardaí visited Hannah at her place of work and questioned her about the body. When they accompanied Hannah to her grandmother's house, Mary Lenihan received the news of her granddaughter's pregnancy and the death of the infant with shock and outrage. The Guards gave evidence that they had intervened as Mary Lenihan verbally abused Hannah, one Guard stated that 'the prisoner got into a violent temper…. She called the girl names' such as 'ruffian and vagabond'. Hannah was subsequently arrested, and admitted killing the child.

However, while in Cork Prison awaiting trial, Hannah confided to a chaplain that it had been her grandmother who killed the child. She stated that her grandmother had known of her condition for some months, and had helped her deliver the infant before sending Hannah to bed. Hannah stated that her grandmother told her the baby had been choked. In addition to this evidence, the Guards gave evidence that Mary Lenihan had attempted to give them money and asked them to 'make it easy on her now.' In support of this, Hannah Lenihan said her grandmother had given her the pound note and told her to take the blame herself.

Hannah was tried for the murder and acquitted on 19 June 1928. When her grandmother's trial began, both the fact and inference of Hannah's acquittal were complicating features in the narrative Mary Lenihan sought to present, and she was convicted of her great-grandchild's murder.

However, in the Court of Criminal Appeal, Mary Lenihan's conviction was quashed, and at her retrial on 6 March 1929 the jury could not reach a verdict. At her second retrial on 6 June 1929, Mary Lenihan was found not guilty of the murder.[18]

Mary Anne Keane

Mary Anne Keane was capitally convicted for the infanticide of her male infant. Unlike many of the women in this sample, 23-year-old Mary Anne Keane was married, however, she had been living apart from her husband for some time. Keane, therefore, like many

[18] NAI CCC Cork 1929-1931 1C-94-55; CCA 30/1928; Department of Justice 234/2384.

cases of infanticide within the sample, was pregnant with an illegitimate infant. Keane had given birth in the Roscommon County Home; following her release on 27 February, Keane made her way on foot to her husband's home in rural Roscommon, spending the night in a house along the way. An eye witness saw her on 2 March near her husband's home, but Keane did go in. Witnesses who saw her on this day gave evidence that she was carrying a parcel which they supposed was the child. That night she was found lying outdoors in a haggard condition, without her infant. The body of the infant was found in a bog-hole about 150 yards from its mother. The prosecution argued that the drowning of the infant was deliberate and cited in support that the child had been stripped of clothing. The defence argued that Keane had walked 16 miles carrying her infant, which was a substantial exertion so soon after confinement and would inevitably have led to an imbalance of the mind.

Keane had nowhere to go on her release from the County Home. Following her marriage, she had left her husband and gone into domestic service before returning to his home in July 1928. On foot of her husband's suspicions that she had returned home pregnant, he had sent her to the County Home in November and the child had been born on 11 February.

Mary Anne Keane was sentenced to death on 10 June 1929 before Justice O'Byrne for the murder of her male infant on 2 March 1929. She was recommended to mercy by the jury. Her sentence was commuted to penal servitude for life just two days following her conviction. Mary Anne Keane was conditionally discharged to the Sisters of Charity in Donnybrook, Dublin, on 4 November 1930.[19] Her release to the institution came after sustained but unsuccessful efforts to persuade her husband to allow her to return home. Her eventual fate is unknown. In 1932 it was noted that there was 'no definite proposal of any sort for her future'[20] and again in July 1936 following further unsuccessful pleas to her husband she remained in Donnybrook: 'Why cannot she remain with the nuns there, and try to be happy under the circumstances.'[21]

Deborah Sullivan

Deborah Sullivan was 21 when she was convicted of the infanticide of her newborn male infant. She was unmarried and was the daughter of a labourer, living in rural Co. Kerry near Killorglin; she had previously worked as a domestic servant. Deborah had concealed her pregnancy from her family; when she felt the labour pains, she had left her house and in her statement she said she had been making her way to the County Home when labour began. Deborah Sullivan gave birth outdoors, in poor weather conditions, on the mountainside. The body of the male infant was found two days later in a stream. After she had given birth, Deborah returned home and told no one what had happened.

[19] NAI CCC Roscommon 1929 1C-94-69; Department of An Taoiseach S.5884; Department of Justice 18/3540.
[20] Department of Justice 18/3540.
[21] Department of Justice 18/3540. Letter from Sacred Heart Home Roscommon to Probation Officer.

In Deborah's third statement to Gardaí, she revealed that she had become pregnant as a result of rape:

> [H]e forced his family affair into my private part and I wanted to get him off me all the time but he would not get off, he was a long time lying down on me and he had his family affair all the time in my private part.[22]

Deborah Sullivan was convicted on 13 June 1929 for the murder of her infant on 14 February 1929. The jury returned during deliberations to ask for directions from the Trial Judge on the state of mind of the accused, at which point Justice O'Byrne advised them that the defence had not discharged the burden of proof requisite to ground a special verdict of insanity. Deborah was therefore found guilty of murder and was recommended to mercy by the jury, which recommendation was endorsed by the Trial judge. Her sentence of death was commuted to penal servitude for life on 18 June 1929. Deborah Sullivan was conditionally discharged from Mountjoy Prison to the Daughters of Charity on Henrietta Street, Dublin, on 2 November 1929. She took a paid situation in St. Anne's institution in Dublin in December 1932.[23]

Annie Walsh

Forty-year-old Annie Walsh was capitally convicted on 21 June 1929 for the murder of her husband Daniel Walsh, on 31 May 1928. Daniel, 'Sonny Dan', Walsh, aged 52, had been found face down in a stream, some miles from his farm in rural Co. Galway. Annie and Sonny Dan had three children together, as well as three children from Annie's first marriage. The inquest into Sonny Dan's death found that he had died of asphyxia due to drowning. However, rumours in the local area, and strong entreaties from Sonny Dan's relatives in the US, prompted a Garda investigation to further enquire into the circumstances of his death, and particularly into the possibility that he had been killed by his wife and her relative Martin Joyce. Rumours particularly swirled that Sonny Dan had been poisoned, however following the exhumation of his body on 28 November 1928, tests returned negative. Investigations continued however, and eventually Martin Joyce and Annie were arrested. It emerged that Annie Walsh and Martin Joyce were engaged in a sexual relationship and this was cited as motivation for the murder. Testimony from Annie's children's pointed to Walsh and Joyce's plan to emigrate following Sonny Dan's death.

Annie Walsh was tried jointly with Martin Joyce in a trial lasting five days. The jury offered no recommendation to mercy. On 24 July, the Court of Criminal Appeal dismissed Annie Walsh's appeal and the date of execution was fixed as 9 August 1929. However, as the case was built substantially on the testimony of Annie's children, Justice O'Byrne recommended commutation of sentence in both cases and sentence was commuted to one of penal servitude for life on 31 July 1929, these sentences were subsequently reduced

[22] NAI CCC Kerry 1929 1C-94-61.
[23] NAI CCC Kerry 1929 1C-94-61; Department of An Taoiseach S.5886; Department of Justice 234/2590.

further to a term of 10 years penal servitude on 10 August 1932. Annie Walsh spent seven years in prison and Martin Joyce spent seven and a half years in prison. Walsh was released on licence 25 January 1936.[24]

Catherine Aherne

Catherine Aherne was sentenced to death for the infanticide of her female infant. Catherine was the only woman within the sample whose infant was not 'illegitimate'. However, although Catherine was married, the circumstances of her pregnancy are suggestive of a family crisis occasioned by an unplanned pregnancy. When Catherine married Laurence Aherne on 19 February, she had been heavily pregnant; she gave birth on 30 March 1929.

When arrested on 20 April, Catherine was still living in her family home, further suggesting the crisis nature of her pregnancy. Catherine Aherne was convicted on 25 June 1929 for the murder of her infant. The jury recommended her to mercy due to the circumstances of the birth, a recommendation endorsed by the Justice O'Byrne; her sentence was commuted to penal servitude for life on 28 June 1929.

Catherine's husband, Laurence, had emigrated to Australia following the trial, due to what Catherine described as the shame of her situation: 'My husband left Ireland and went to Australia as a result of the disgrace brought on him through me.'[25] Laurence petitioned the Department of Justice from Australia that his wife might be released from prison to join him there, however when the Department acquiesced to this petitioning all communications from Laurence had ceased, and rumours suggested he was suffering from alcohol-related illness. However, Catherine's relatives continued to petition the Department and she was duly released to her family on 21 June 1933.[26]

Christina Russell

Christina Russell, aged 28, sentenced to death for the infanticide. She had given birth to her child in the South Dublin Union on 17 August, and had left the Union on 5 September. The child was found at Kilreask Bridge, County Dublin, on 6 September submerged in 18 inches of water. Russell was from St. Margaret's Village in County Dublin and had returned there without her infant on 6 September.

Russell gave evidence that she had stayed the night of 5 September with a woman she had met while in the Union, she said she had given her infant to this woman on the understanding the infant would be cared for. However, this account was contradicted by the proprietor of a boarding house on Dublin's Capel Street who testified that Christina, along with her infant, had stayed in her establishment on the night of 5 September. Other

[24] NAI CCC Galway 1929-1931 1C-94-56-58; CCA 16/1929; Department of An Taoiseach S.5904; Department of Justice 234/2599.
[25] NAI Department of Justice 234/2603.
[26] NAI CCC Wexford 1929 1C-94-75; Department of An Taoiseach S.5891; Department of Justice 234/2603.

witnesses gave evidence that they had seen Christina making her way home with the infant.

Christina was convicted on 27 November 1930. Russell's execution was set for 19 December but the jury added a strong recommendation to mercy, as did the Trial Judge, and her sentenced was commuted to one of penal servitude for life on 28 November 1930.Christina was released on licence to her family on 19 March 1934.[27]

Margaret Finn

Margaret Finn was capitally convicted for infanticide. Finn was 25 years old and unmarried; until just prior to the birth she had worked as a domestic servant in her local area, near the village of Ruane in rural Co. Clare. She was charged with murder along with her 30-year-old cousin Brigid Crowe who was living with the Finns at this time. Crowe was acquitted of the murder on 4 March, one day after Margaret's trial. Margaret had taken Brigid Crowe into her confidence, and Crowe had been present during the birth which occurred in a field next Margaret's house. Margaret gave evidence that she had felt pains for some time before the birth, as these intensified she had confided in her cousin that she was to have a baby and cautioned Brigid not to tell her mother. When the pains did not slacken, both women went outside, and labour was over in ten minutes:

> The child started to cry and she told me to catch it by the neck and choke it. She then took a lace out of her boot and gave it to me. I tied it around the child's neck and she lifted up the stones and I took it over and she fixed the stones down herself and then we went in home.[28]

Margaret was convicted on 3 March 1931 for the infanticide of her male infant on 17 June 1930. She was recommended to mercy by the jury due to the exceptional circumstances attending the birth, a view endorsed by Justice Johnston, and her sentence was commuted to penal servitude for life on 5 March, just two days after her conviction. Margaret was conditionally discharged to the Sisters of Charity in Donnybrook on 3 October 1933.[29] She remained in this institution for the remainder of her life.[30]

Jane O'Brien

Jane O'Brien was sentenced to death for the murder of her adult nephew John Cousins. Jane had lived in Killinick, Co. Wexford with her grown son and the victim. John Cousins had died following a fatal shotgun wound which he received as he walked home on the night of 26 March 1932. Cousins had been to a local house where he had played card-games. As it neared midnight, Cousins had walked home with a local farmer, James

[27] NAI CCC Dublin 1930 1C-94-52; CCA 24/1930; Department of An Taoiseach S.6096; Department of Justice 234/3332.
[28] NAI CCC Clare 1931 1D-94-54.
[29] NAI CCC Clare 1931 1D-94-54; Department of An Taoiseach S.6129; Department of Justice 234/3118.
[30] Report of the Inter-Departmental Committee to Establish the Facts of Statement Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013).

O'Reilly, whom he had parted with at the gate to his home, a house known as Sanctuary. O'Reilly gave evidence that after he had continued on some steps he heard a shot and ran back whereupon he met John Cousins coming towards him doubled over saying 'I am shot'. When the local doctor reached Cousins, lying at the side of the roadway covered in coats, he was saturated in blood with scattered puncture wounds throughout his abdomen. A car was found to take John Cousins to hospital but he was pronounced dead on arrival. An autopsy revealed up to 100 pellet wounds in John Cousins's abdomen, and a wound of 4 to 5 inches diameter. Throughout the night, Guards had been stationed on-duty at the area where he had been shot. At approximately 4.20am on the morning of Sunday 27 March, the investigating Guards arrived at Sanctuary, the home of Jane O'Brien.

Jane O'Brien, and her son John, had lived at Sanctuary for 12 years. They had moved in 1920 at the request of Jane's brother William Cousins following the death of his wife. Jane had sold her property and invested the proceeds of the sale into their new home. Jane's brother had died in December 1931, leaving his son John Cousins as the presumptive heir. Prosecution counsel sought to demonstrate that following William's death, Jane viewed her position in the household as precarious. John Cousins had been engaged to a local girl, Annie Maguire, whose house he had been returning from when he was shot, and they had planned to marry in December of 1932. This fact was put forward as motivation for the murder, Jane O'Brien had, they argued, murdered her nephew John Cousins because she feared she would become homeless when John married.

Jane O'Brien was convicted on 8 June 1932; she was recommended to mercy due to her age and sex, and her sentence was commuted to penal servitude of life on 15 July 1932. Jane O'Brien spent nine years in prison and was conditionally discharged on 21 July 1941 to the Daughters of Charity on Henrietta Street.[31] It is unknown if or when Jane left this institution.

Elizabeth and Rose Edwards

Sisters Elizabeth and Rose Edwards were sentenced to death for the infanticide of Elizabeth's infant on the 16 or 17 October 1934. Elizabeth and Rose, aged 28 and 20 respectively,[32] lived in Fuerty, rural County Roscommon, in the family home with their parents and their brother. Elizabeth had become pregnant in early 1934; she had successfully concealed her pregnancy from her family and confided in her sister six weeks before the baby was due. On the night of the 2 October, Elizabeth experienced severe pains and Rose took her to the home of a local doctor who drove the sisters to the Roscommon County Home and shortly after her arrival Elizabeth gave birth to a baby girl. Rose returned home and told her family that her sister had been unwell and had gone to the local hospital.

[31] NAI CCC Wexford 1932 1C-95-73; CCA 9/1932; Department of An Taoiseach S.8653.
[32] There is some discrepancy regarding their age; some documents record their ages as 23 and 18 while their parents gave evidence that they were 28 and 20, and newspapers reported their ages as 28 and 20 also.

Elizabeth spent two weeks in the County Home and was discharged on 16 October 1934. Rose organised a car to collect her sister from the County Home, and to take them home together; they requested the driver stop one mile from their home. Elizabeth and Rose left the car, taking the child, the last confirmed sighting of the child. A neighbour testified that he saw them on the same road, a quarter of a mile from their house without a baby.

Elizabeth and Rose, alternatively, claimed that they had walked the mile with the baby, meeting no one along the way, and had left the baby in a clump of trees just outside their house while they waited for a chance to smuggle the child inside. They said that once inside they had kept the child in the bedroom. Elizabeth and Rose claimed they left the house once that night to run errands for their parents, and that they returned home and went to bed at around 11.30pm. Elizabeth said that when she woke up on the morning of 17 October she found the child dead. She asked Rose to bury the child, which Rose did later that day. The sisters further stated that the baby had been delicate, and had refused food.

On 29 October, a Matron at the Roscommon County Home telephoned the Roscommon Garda station to enquire whether Elizabeth Edwards had returned home with her child.[33] The message was communicated to the local Guards who called at the Edwards house that night. Rose took the Guards to the spot where she said she had buried the body, but the Guards could find no evidence of a grave. The next day the Guards returned and Rose again led them to the spot they had searched the night before. Now, however, the Guards were confronted with a freshly dug hole, with a sod placed over it, and a white piece of cloth trailed from the hole. The Guards initiated a search for the body of the child, but after over a month of extensive searches of the local area and the River Suck, no body was found.

Elizabeth and Rose were convicted on 28 March 1935. They were both recommended to mercy by the jury, and their sentences were commuted to penal servitude for life on 18 May. Rose Edwards was released to her family on 1 December 1936 and Elizabeth was conditionally discharged to the Daughters of Charity on Henrietta before being released to her family in December 1938.[34]

Mary Somerville

Fifty-year-old Mary Somerville was a widow from Knockaturly, in County Monaghan. She had worked as a farmer since the death of her husband John Somerville seven years prior to the events of the case. On 29 July 1938, Gardaí arrived at Somerville's house to investigate rumours that her 17-year-old unmarried daughter Annie had been pregnant. Mary Somerville initially denied this before admitting that Annie had given birth some weeks before and the infant had been sent to a woman in Belfast. Mary Somerville was removed to the local Garda station, due to her proximity to the border with Northern

[33] 'On the Trail: The Case of the Two Sisters', *Garda Review*, April 1947, 389-392.
[34] NAI CCC Roscommon 1935 1D-94-20; CCA 13/1935 Elizabeth Edwards; CCA 14/1935 Rose Edwards Department of An Taoiseach S.7777; Department of Justice 18/885A.

Ireland, and the fear that she would abscond. The following morning, the 30 July, while at the Garda station, she gave a statement admitting to killing the child shortly after its birth on 11 July; that same day, on her direction, the body of the infant was found in a well. The post-mortem indicated death had occurred due to asphyxia by drowning. The infant had been put into a weighted bag immediately after birth and placed in a well on their property.

Mary Somerville was sentenced to death on 15 November 1938. Somerville was recommended to mercy and her sentence was commuted to penal servitude for life on 13 December 1938. Somerville was conditionally discharged to the Bethany Home in Dublin on 23 December 1938, an institution run by the Church of Ireland. Somerville wrote to the Department of Justice on 14 February 1939 to inform them that she was leaving the Bethany Home, and provided a forwarding address in Northern Ireland.[35]

Kate Owens

Kate Owens, aged 36, lived in Athenboy in Co. Westmeath with her 75-year-old mother. On 7 May 1943, Kate was questioned by the Guards in relation to rumours that she had recently given birth, which Kate initially denied. However, in a statement made on that same day she admitted that she had given birth to a baby on the 7 April, she said the child was born alive and that she had put her hand over its mouth to prevent it from crying. Kate then admitted that she had then buried the infant in the garden.

In all, Kate made four statements. During the search of the garden, Gardaí unearthed the bones of a number of infant skeletons. In her second statement, Kate said that she had given birth to one infant only. However, in a third statement given on 8 May, Kate admitted that she had given birth previously, once every year for the last five or six years. She admitted that all but one of these births had been live births, and that those infants born alive had been smothered and buried underneath the currant bushes in the garden. Kate was arrested on 10 May 1943 and charged initially with three counts of murder although she was ultimately arraigned on the first count only.

Kate Owens was sentenced to death on 22 November 1943 for infanticide. Kate was recommended to mercy by the jury, and her sentence was commuted to penal servitude for life on 9 December. Kate was released from prison on 2 May 1949 to the employment of the Sisters of Charity, St. Monica's, in Dublin.[36]

Ellen Keogh

Ellen Keogh was from a rural area of Co. Westmeath, and lived in a cottage in Derrymore, with her four children, aged between five and 11, and her younger brother. Ellen's husband, Peter Keogh, had spent the past five years working in England, sending back

[35] NAI CCC Monaghan 1938 1D-60-62; CCA 36/1938; Department of An Taoiseach S.11040; Department of Justice 18/3110A.
[36] NAI CCC Westmeath 1943 1D-22-84; Department of An Taoiseach S.13383; Department of Justice 18/6678A.

money to Ellen every two weeks. Ellen had been having a sexual relationship with a local man called John Mitchell for two years prior to the events of the case. On 11 January 1944, Gardaí called to the Keogh cottage to question Ellen about rumours that she had been pregnant. In May and July of 1943, a local Guard had called to the Keogh cottage and had noticed that Ellen appeared to be pregnant; when he returned in early December she had been heavily pregnant. In Ellen's first statement on the 11 January she denied this. However, she subsequently claimed that she had been delivered of a premature baby that had been born dead. In Ellen's second statement, she revealed that the baby had been full-term, and had lived, but that John Mitchell had taken and disposed of the infant in the local river. The body of the infant was found in the nearby River Deel on the night of the 13. On 14 January 1944, Ellen was arrested and charged with the murder along with John Mitchell. On application, Keogh and Mitchell were tried separately.

On 29 April, Ellen was found guilty of infanticide and was sentenced to death. However, the jury included the following rider to their verdict: 'As the Jury are unanimously of the opinion that the accused had, in the circumstances, no option but to aid and abet they strongly recommend her to the mercy of the Court.' This was an obvious reference to the influence of John Mitchell. Ellen appealed, citing the jury's rider and on 16 June, the Court of Criminal Appeal quashed her conviction and ordered a retrial on the same offence. Her retrial commenced on 11 October 1944, again Ellen denied murder but her plea of manslaughter was accepted and she was sentenced to three years penal servitude.[37] John Mitchell was eventually acquitted of murder, and no further charges were brought against him.

Agnes McAdam

Fifty-three-year-old Agnes McAdam was from a rural area near Ballybay in Co. Monaghan; she lived in her family home with her brother and his wife. They were a farming household, and while Agnes had no legal interest in the land, she worked on the farm and in the home.

On Friday 28 September 1945 Agnes delivered two cakes to her nearby neighbours, the Finnegans. Lily Finnegan had been collecting cakes and donations for an upcoming social. Agnes's brother and sister-in-law had previously given a sum of money towards the social, but Lily Finnegan had asked if Agnes would bake a cake for the event. Agnes arrived at the Finnegan household to deliver the cakes on the afternoon of 28 September and stayed a while to talk with Lily's mother Mary. While she was there, Lily returned home, and shortly afterwards James Finnegan, Lily's father, returned home also. As the family sat to eat dinner, Agnes left. Following their dinner, James Finnegan, judging that there were sufficient cakes collected for the social, took down one of the cakes that Agnes had delivered and divided it for the family. Lily Finnegan spat her piece of cake out onto the floor, describing it as too bitter to eat, but Mary Finnegan ate her slice and James finished

[37] NAI CCC Westmeath 1944 1D-27-1; CCA 56/1944; Department of Justice 18/7448A.

the cake, except for some small amounts which remained on the floor, which were eaten by the dog.

After they had eaten, the dog became violently ill, dying shortly after in the kitchen of the farmhouse. At this time also, Mary Finnegan became ill with convulsions and fainting. As Mary was suffering these symptoms, James Finnegan returned from working on the bog, he was also very ill with similar symptoms; his legs were jerking and he could not swallow the water given to him as his teeth clenched together during the convulsions. Although Mary Finnegan recovered from her symptoms, a short while after he returned home, James Finnegan died. The nature of his death, its suddenness, as well as the contemporaneous illness of Mary and the dog, suggested poisoning.

The day after James Finnegan's death, Gardaí called to Agnes McAdam's home to question her, some days later they returned to take a statement. On 3 October, the materials from the Finnegan house were sent to Dublin for testing; tests revealed traces of strychnine in James Finnegan's stomach and contents as well as in the uneaten cake which had also been delivered by Agnes.

No motive could be established for the crime, rather than animus towards James Finnegan the prosecution suggested Agnes had intended that those attending the social become ill. Agnes McAdam was sentenced to death on 15 February 1946 for the murder of her neighbour James Finnegan. Agnes was recommended to mercy by the jury and her sentence was commuted to penal servitude for life on 9 April 1946. The defence argued that had the cake been divided into small pieces and eaten by many, as Agnes had expected, only minor illness would have resulted. Agnes was conditionally discharged to the Good Shepherd Convent in New Ross, Co. Wexford on 30 September 1949.[38] It is unknown if or when Agnes left this institution.

Mary Agnes Bernadette Daly

On 10 August 1948 Mary Agnes Bernadette Daly assaulted Mary Gibbons in the Church of the Seven Dolours in Glasnevin, a suburb of north Dublin. The assault was unprovoked and Daly and Gibbons were unknown to each other. Twenty-seven-year-old Mary Agnes Daly entered the church and attacked the 83-year-old Mary Gibbons with a hammer while Gibbons kneeled to pray. Passers-by heard screams and cries for help coming from inside the church and a group of persons, who would later detail the events as witnesses, managed to open the door against which the two women were struggling. When the door was opened, causing both women to fall back onto the floor of the church, the witnesses saw an older woman, badly injured and covered in blood, and a younger woman speckled with blood spots.

[38] NAI CCC Monaghan 1946 1D-29-11; CCA 16/1946; Department of An Taoiseach S.13804; Department of Justice 18/9074A.

By this stage Gardaí had also reached the scene. Both women made some comments regarding what had happened in the church, and Daly was taken to the nearby Garda station. A badly injured Gibbons was taken to hospital where doctors viewed her situation as critical. That night Gibbons made a dying declaration. The following day, on 11 August 1948, a Special Court was held in Gibbons's hospital ward during which she made a statement in the presence of Gardaí, medical staff, a member of the Press, Mary Agnes Bernadette Daly and a solicitor acting on Daly's behalf. On 17 August 1948, Mary Gibbons died from the injuries she had sustained during the attack. Daly, who had already been charged with lesser offences, was instead charged with her murder.

Daly's trial commenced in the Central Criminal Court, in Green Street in Dublin, on 8 November 1948 and lasted for five days. The jury returned a verdict of guilty with a strong recommendation to mercy. An application in the Court of Criminal Appeal was unsuccessful; however, the case was referred to the Supreme Court on a point of law of exceptional public importance. The Supreme Court held that Mary Gibbons's dying declaration should not have been admissible as evidence as it did not contain details of the revised charge; the Court quashed Daly's conviction and sentence and ordered a retrial. On 29 April 1949, Daly was again convicted of the murder and sentenced to death, again with a strong recommendation to mercy from the jury. Mary was released from prison in early 1954 after serving five years and four months.[39]

Frances Cox

Thirty-year-old Frances Cox was sentenced to death on 21 November 1949 for the murder of her brother, 33-year-old Richard Cox, on 29 May 1949. The Coxes were a Co. Laois farming family, Richard Cox Snr had died in 1939 and Frances and Richard lived in the farmhouse with their widowed mother, Jemima Cox. The family owned a farm comprising approximately 127 acres, a substantial landholding, and this farm was worked by Frances and Richard.

Richard died on Sunday 29 May 1949, after four days during which he had suffered a series of painful convulsive fits. On Tuesday 31 May, on foot of suspicious Gardaí, Richard's funeral was halted and a post-mortem was conducted; Richard was found to have died of strychnine poisoning.

Superintendent George Lawlor, head of the Garda Technical Bureau in Dublin, was brought in to investigate; the investigation focused on Frances Cox. Suspicion fell heavily on Frances because of her conviction, on 22 July, for the manslaughter of an illegitimate infant she had given birth to on 18 May, less than two weeks prior to Richard's death. On the same day on which Frances had been convicted of manslaughter, she was arrested for her brother's murder. Frances was charged on Tuesday July 25 and her trial commenced in the Central Criminal Court in Dublin on 15 November 1949. Her trial lasted six days, and

[39] NAI CCC Unknown Counties 1949 1D-50-42; CCA 68/1948; Department of An Taoiseach S.14430; Department of Justice 170/7622.

following 85 minutes of jury deliberation she was found guilty of Richard's murder and was sentenced to death, to be hanged December 15, there was no recommendation to mercy. Despite this, Frances's sentence was commuted to penal servitude for life on 22 December 1949. She served seven years and four months before her release on licence on 21 March 1957.[40]

Mary Anne (Mamie) Cadden

Early on the morning of 18 April 1956, the body of a woman was found outside 15 Hume Street in Dublin. The post-mortem revealed that the woman, who was identified as 33-year-old Helen O'Reilly, had died as a result of an embolism which had caused heart failure and which had occurred when air or liquid was injected into her bloodstream, she would have lost consciousness in seconds and died minutes later. O'Reilly had been five months pregnant, and had died during the course of an abortion.

Mamie Cadden, who lived in a one-bedroom flat at 17 Hume Street and had been previously convicted of child abandonment and intent to procure a miscarriage, immediately became a suspect in O'Reilly's death. Cadden could be charged with murder under the legal doctrine of constructive malice; this doctrine ensured that as death had resulted from the commission of a felony the death was considered murder. O'Reilly had died during an abortion procedure, a felony under Section 58 of the Offences Against the Person Act 1861.

On 1 November 1956 Cadden was convicted of murder and sentenced to death. On 4 January, 1957 Cadden's sentence was commuted to penal servitude for life. While in Mountjoy Prison, Cadden was certified insane and was transferred to the Central Criminal Lunatic Asylum in Dundrum on 7 August 1958; Cadden died in this institution on 20 April 1959 aged 67.[41]

Marie Murray

The last woman sentenced to death in Ireland was 27-year-old Marie Murray, sentenced along with her husband Noel Murray, after a bank robbery in which an off-duty member of the Garda Síochána was killed. Marie was sentenced to death under the Criminal Justice Act 1964 which had retained capital punishment for subversive murders only.

On the afternoon of 11 September 1975, Marie and Noel Murray robbed a Bank of Ireland branch in North Dublin. They entered masked and armed, leaving with just over £7,000. On leaving they got into a waiting car and drove away erratically almost colliding with a vehicle being driven by Garda Michael Reynolds, who was off-duty and in civilian clothing. Reynolds gave chase and as he drew close to the Murrays' car it stopped at St. Anne's Park in Raheny, North Dublin. The occupants of the car began to escape on foot

[40] NAI CCC Dublin 1949 1D/29/7; CCA 72/1949; Department of An Taoiseach S.14689; Department of Justice 18/11757.
[41] NAI CCA 36/1956; Department of An Taoiseach S.16116; Department of Justice 18/3562.

followed by Reynolds. Reynolds caught up to Noel Murray and was apprehending him when Marie Murray shot him in the head at close range with a Colt .45 revolver.

Marie Murray, and her husband Noel, were brought to trial at the non-jury Special Criminal Court on a charge of capital murder. Marie Murray and Noel Murray were convicted and sentenced to death on 9 June 1976. In the Supreme Court, the *mens rea* requirement of capital murder was at issue; the Court held that Marie Murray had to have considered the possibility that the victim was a Guard before she shot. As a result of this finding, Noel's capital murder conviction was substituted for a conviction for non-capital murder and a retrial was ordered for Marie. At her retrial, Marie was instead convicted of non-capital murder, a crime which carried the sentence of penal servitude for life.[42]

[42] *The People (DPP) v Noel Murray and Marie Murray* [1977] 111 ILTR 65; NAI Department of An Taoiseach 2006/133/701; 2006/133/702; 2006/133/703; 2006/133/704; 2007/116/769.

Bibliography

Primary Sources

Archives Consulted

National Archives of Ireland

Dublin Diocesan Archives

National Library of Ireland Archives

Radio Telefís Éireann Archive

Irish Labour History Society Archive

Limerick City Library Archives

British National Archives at Kew

Mountjoy Prison Museum

Official Publications (by year)

Dooley E, *Homicide in Ireland: 1972-1991* (Stationery Office 1995).

Carmody P, and McEvoy M, *A Study of Irish Female Prisoners* (Stationery Office 1996).

Constitution Review Group, *Report of the Constitution Review Group* (Stationery Office 1996).

Dooley E, *Homicide in Ireland: 1992-1996* (Stationery Office 2001).

Final Report of the Commission to Inquire into Child Abuse, the 'Ryan Report' (Dublin 2009).

Central Statistics Office, *Garda Recorded Crime Statistics, 2007-2011* (CSO 2013).

Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, the 'McAleese Report' (Dublin 2013).

Newspapers

Connaught Sentinel

Connaught Telegraph

Fermanagh Herald

Freeman's Journal

Garda Review

The Guardian

Irish Examiner

Irish Independent

Irish Press

The Irish Times

Kerryman

Leinster Express

Leitrim Observer

Limerick Leader

Mayo News

The Observer

Sunday Independent

The Times

Ulster Herald

Key Cases

Attorney General v Mary Lenihan [1929] 63 ILTR 100

Attorney-General v Edwards [1935] IR 500

Attorney General v Ellen Keogh [1944] IR 309

Attorney General v Mary Anne Cadden [1957] 91 ILTR 97

The People (DPP) v Noel Murray and Marie Murray [1977] 111 ILTR 65

Key Legislation

Concealment of Birth of Bastards Act 1623

Act for Suppressing the Detestable Sins of Incest, Adultery and Fornication 1650

Act to Prevent the Destroying and Murdering of Bastard Children 1708

Malicious Shooting or Stabbing Act 1803 (Lord Ellenborough's Act)

Offences Against the Person Act 1861

Infanticide Act 1922 (UK)

Infanticide Act 1938 (UK)

Infanticide Act 1949

Homicide Act 1957 (UK)

Criminal Justice Act 1964

Criminal Justice Act 1990

Secondary Sources

Adler F, *Sisters in Crime: The Rise of the New Female Criminal* (McGraw Hill 1976).

Aileen Wuornos: The Selling of a Serial Killer, dir. by Nick Broomfield (Channel 4 Television Corporation and Lafayette Films United States 1994).

Aileen: Life and Death of a Serial Killer, dir. by Nick Broomfield (Lafayette Films United States 2003).

Allen H, 'Rendering them Harmless: The Professional Portrayal of Women Charged with Serious Violent Crimes', in Kathleen Daly and Lisa Maher, eds, *Criminology at the Crossroad: Feminist Readings in Crime and Criminology* (Oxford University Press 1998).

Amnesty International, *International Standards on the Death Penalty* (Amnesty International 2006).

Amnesty International, *Death Sentences and Executions 2011* (Amnesty International 2013).

Arensberg CM and Solon T Kimball ST, *Family and Community in Ireland* (3rd ed, CLASP Press 2001).

Atwell MW, *Wretched Sisters: Examining Gender and Capital Punishment* (2nd ed, Peter Lang 2014).

Bacik I, Kelly A, O'Connell M, and Sinclair H, 'Crime and Poverty in Dublin: An Analysis of the Association between Community Deprivation, District Court Appearance and Sentence Severity', in Ivana Bacik and Michael O'Connell, eds, *Crime and Poverty in Ireland* (Round Hall Sweet & Maxwell 1998).

Bacik I, 'Women and the Criminal Justice System', in Paul O'Mahony, ed, *Criminal Justice in Ireland* (IPA 2002).

Bacik I, Costello C, and Drew E, *Gender Injustice: Feminising the Legal Professions?* (Trinity College Dublin Law School 2003).

Bacik I, *Kicking and Screaming: Dragging Ireland into the Twenty-First Century* (O'Brien Press 2004).

Bacik I, (2013) 'The Irish Constitution and Gender Politics: Developments in the Law on Abortion', *Irish Political Studies*, 28(3), 380-398.

Ballinger A, *Dead Woman Walking: Executed Women in England and Wales, 1900-1955* (Ashgate/Dartmouth 2000).

Ballinger A, (2007) 'Masculinity in the Dock: Legal Responses to Male Violence and Female Retaliation in England and Wales, 1900-1965', *Social and Legal Studies*, 16(4), 459-481.

Ballinger A, 'Feminist Research, State Power and Executed Women: The Case of Louie Calvert', in Stephen Farrall, Mike Hough, Shadd Maruna and Richard Sparks, eds, *Escape Routes: Contemporary Perspectives on Life after Punishment* (Routledge/Cavendish 2011).

Ballinger A, (2012) '"Clear-Eyed Description and Objective Analysis": A Peculiar History of the Death Penalty', *British Journal of Criminology*, 'A Symposium of Reviews of Peculiar Institution', 52(1), 202-216.

Banner S, *The Death Penalty: An American History* (Harvard University Press 2002).

Beattie JM, *Crime and the Courts in England, 1660-1800* (Clarendon Press 1986).

de Beauvoir S, *The Second Sex* (1949/1997 Vintage).

Beccaria C, *On Crimes and Punishments and Other Writings* (Richard Bellamy ed, Cambridge University Press 1995).

Bedau HA, (1983) 'Bentham's Utilitarian Critique of the Death Penalty', *Journal of Criminal Law and Criminology*, 74(3) 1033-1065.

Beckman K, (2004) 'Dead Woman Glowing: Karla Faye Tucker and the Aesthetics of Death Row Photography', *Camera Obscura*, 19(55), 1-42.

Beirne P, and O'Donnell I, (2010) 'Gallous Stories or Dirty Deeds? Representing Parricide in JM Synge's "The Playboy of the Western World"', *Crime Media Culture*, 6(1), 27-48.

Belknap J, *Invisible Women: Gender, Crime and Justice* (Wadsworth 1992).

Birch H, 'If Looks Could Kill: Myra Hindley and the Iconography of Evil', in Helen Birch, ed, *Moving Targets: Women, Murder and Representation* (Virago 1993).

Blackstone W, *Commentaries on the Laws of England, Volume 1* (University of Chicago Press 2002).

Bledsoe J, *Death Sentence: The True Story of Velma Barfield's Life, Crimes and Execution* (EP Dutton 1998).

Boland E, (1995) 'The Minds and Voices of Modern Irish Women', *Journal of Women's History*, 6(4) and 7(1), 6-8.

Borgwardt E, (2005) 'Re-examining Nuremberg as a New Deal Institution: Politics, Culture and the Limits of Law in Generating Human Rights Norms', *Berkeley Journal of International Law*, 23(2), 401-462.

Bosworth M, (2000) 'Confining Femininity: A History of Gender, Power and Imprisonment', *Theoretical Criminology*, 4(3), 265-284.

Bosworth M, (2001) 'The Past as a Foreign Country: Some Methodological Implications of Doing Historical Criminology', *British Journal of Criminology*, 41(3), 431-442.

Bosworth M, (2012) 'Subjectivity and Identity in Detention: Punishment and Society in a Global Age', *Theoretical Criminology*, 16(2), 123-140.

Bosworth M, and Kaufman E, 'Gender and Punishment', in Jonathan Simon and Richard Sparks, eds, *The Sage Handbook of Punishment and Society* (Sage 2013).

Brennan D, *Irish Insanity, 1800-2000* (Routledge 2014).

Brennan KM, (2013) 'Punishing Infanticide in the Irish Free State', *Irish Journal of Legal Studies*, 3(1), 1-35.

Brennan KM, (2013) '"A Fine Mixture of Pity and Justice": The Criminal Justice Response to Infanticide in Ireland, 1922-1949', *Law and History Review*, 31(4), 793-841.

Brewer JD, Lockhart B, and Rogers P, *Crime in Ireland, 1945-95: 'Here be Dragons'* (Clarendon 1997).

Butler H, *Grandmother and Wolfe Tone* (Liliput 1990).

Butler J, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990/2000).

Cain M, (1990) 'Towards Transgression: New Directions in Feminist Criminology', *International Journal of the Sociology of Law*, 18(1), 1-18.

Carey T, *Mountjoy: The Story of a Prison* (Collins Press 2000).

Carey T, *Hanged for Murder: Irish State Executions* (Collins Press 2013).

Carlen P, *Magistrates' Justice* (Martin Robertson 1976).

Carlen P, *Women's Imprisonment: A Study in Social Control* (Routledge and Kegan Paul 1983).

Carlen P, Diana Christina et al, *Criminal Women: Autobiographical Accounts* (Polity, in association with Basil Blackwell 1985).

Carroll JE, (1997) 'Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice', *Texas Law Review*, 75(6), 1413-1453.

Charleton P, *Offences Against the Person* (Round Hall 1992).

Chesney-Lind M, (1974) 'Juvenile Delinquency: The Sexualization of Female Crime', *Psychology Today*, July, 43-46.

Christophe JB, *Capital Punishment and British Politics: The British Movement to Abolish the Death Penalty, 1945-1957* (Allen & Unwin 1962).

Code L, 'Feminist Epistemology and the Politics of Knowledge: Questions of Marginality', in Mary Evans, Clare Hemmings, Marsha Henry, Hazel Johnstone, Sumi Madhok, Ania Plomien and Sadie Wearing, eds, *The Sage Handbook of Feminist Theory* (Sage 2014).

Conley C, (1995) 'No Pedestals: Women and Violence in Late-Nineteenth-Century Ireland', *Journal of Social History*, 28(4), 801-818.

Conley C, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Lexington Books 1999).

Conley C, *Certain Other Countries: Homicide, Gender and National Identity in Late Nineteenth Century England, Ireland, Scotland and Wales* (Columbus Ohio State University Press 2007).

Convery C, *Addressing Offending by Women: A Literature Review* (Northern Ireland Office, Research and Statistical Series, No. 21, 2009).

Cooey PM, (2002) 'Women's Religious Conversions on Death Row: Theorizing Religion and State', *Journal of the American Academy of Religion*, 70(4), 699-717.

Crenshaw K, (1989) 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics', *University of Chicago Legal Forum*, 139-167.

Cullen Owens R, *Smashing Times: A History of the Irish Women's Suffrage Movement* (Attic Press 1984).

Cunliffe E, *Murder, Medicine and Motherhood* (Hart 2011).

Cunningham MD, and Vigen MP, (2002) 'Death Row Inmate Characteristics, Adjustment and Confinement: A Critical Review of the Literature', *Behavioral Sciences and the Law*, 20(1/2), 191-210.

Curtin G, *The Women of Galway Jail: Female Criminality in Nineteenth-Century* Ireland (Arlen House 2001).

Daly K, and Chesney-Lind M, (1988) 'Feminism and Criminology', *Justice Quarterly*, 5(4), 497-538.

Davis FF, *The History and Development of the Special Criminal Court, 1922-2005* (Four Courts Press 2007).

Davis K, 'Paternalism Under the Microscope', in Alexandra Dundas Todd and Sue Fischer (eds) *Gender and Discourse: The Power of Talk, Vol. XXX* (Ablex 1988).

Deale KEL, *Memorable Irish Trials* (Constable 1960).

Deale KEL, *Beyond Any Reasonable Doubt? A Book of Murder Trials* (Gill and Macmillan 1971).

Death Penalty Information Centre <http://www.deathpenaltyinfo.org/women-and-death-penalty#executed> accessed 24 June 2015.

Dickens C, (30 October 1852) 'Lying Awake', *Household Words*, No.136, 145.

Dobash RP, Dobash RE, and Gutteridge S, *The Imprisonment of Women* (Blackwell 1986).

Donnelly M, 'Gender Differences and Criminal Law Defences', in Gerard Quinn, Attracta Ingram, Stephen Livingston, eds, *Justice and Legal Theory in Ireland* (Oak Tree Press 1995).

Doyle DM, (2011) '"The Guilty Sexual Predator" and the "Innocent Comely Maiden": Gender, Paternalism and the Pregnancy Factor', *Irish Criminal Law Journal*, 21(2), 36-40.

Doyle DM, (2012) 'Reasonable Belief and Unlawful Carnal Knowledge: A Historical Perspective', *Irish Criminal Law Journal*, 47(1), 49-75.

Doyle DM, and O'Donnell, I (2012) 'The Death Penalty in Post-Independent Ireland', *Journal of Legal History*, 33(1), 65-91.

Doyle DM, and Ian O'Donnell I, (2014) 'A Family Affair? English Hangmen and a Dublin Jail, 1923-54', *New Hibernia Review*, 18(4), 101-118.

Doyle DM, (2015) 'Republicans, Martyrology, and the Death Penalty in Britain and Ireland, 1939-1990', *Journal of British Studies*, 54(3), 703-722.

Earner-Byrne L, (2008) 'Reinforcing the Family: The Role of Gender, Morality and Sexuality in Irish Welfare Policy, 1922-1944', *History of the Family*, 13(4), 360-369.

Earner-Byrne L, (2015) 'The Rape of Mary M.: A Microhistory of Sexual Violence and Moral Redemption in 1920s Ireland', *Journal of the History of Sexuality*, 24(1), 75-98.

Edwards S, *Women on Trial: A Study of the Female Suspect, Defendant and Offender in the Criminal Law and Criminal Justice System* (Manchester University Press 1984).

Ehrenreich B, and English D, *For Her Own Good: 150 Years of the Experts' Advice to Women* (Anchor Books 1989).

Faith K, *Unruly Women: The Politics of Confinement and Resistance* (Seven Stories Press 1993/2011).

Fallon CH, *Soul of Fire: A Biography of Mary MacSwiney* (Mercier 1986).

Farr KA, (2000) 'Defeminizing and Dehumanizing Female Murderers: Depictions of Lesbians on Death Row', *Women and Criminal Justice*, 11(1) 49-66.

Farrell E, (2008) '"The Fellow Said it was No Harm and Only Tricks": The Role of the Father in Suspected Cases of Infanticide in Ireland, 1850-1900', *Journal of Social History*, 45(4), 990-1004.

Farrell E, (2012) '"Infanticide of the Ordinary Character': An Overview of the Crime in Ireland, 1850-1900', *Irish Economic and Social History*, 39(1), 56-72.

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

Feeley MM, and Little DL, (1991) 'The Vanishing Female: The Decline of Women in the Criminal Justice Process, 1687-1912', *Law and Society Review*, 25(4), 719-758.

Ferriter D, *Occasions of Sin* (Profile 2009).

Finnane M, *Insanity and the Insane in Post-Famine Ireland* (Croom Helm 1981).

Finnegan F, *Do Penance or Perish: A Study of Magdalen Asylums in Ireland* (Congrave Press 2001).

Fitz-Gibbon K, *Homicide Law Reform: Gender and the Provocation Defence* (Palgrave Macmillan 2014).

Foucault M, *The Archaeology of Knowledge* (Tavistock 1972).

Foucault M, *Discipline and Punish: The Birth of the Prison* (Penguin 1979).

Foucault M, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977* (Colin Gordon ed/tr, Harvester Press 1980).

Fox M, 'Crime and Punishment: Representations of Female Killers in Law and Literature', in John Morison and Christine Bell, eds, *Tall Stories? Reading Law and Literature* (Dartmouth 1996).

Fraser DM, *The Book of Glasgow Murders* (Neil Wilson Publishing 2009).

Frost G, (2004) '"She is but a woman": Kitty Byron and the English Edwardian Criminal Justice System', *Gender and History*, 16(3), 538-560.

Frug MJ, (1992) 'A Postmodern Feminist Legal Manifesto (An Unfinished Draft)', *Harvard Law Review*, 105(5), 1045-1075.

Gallagher M, *The Irish Labour Party in Transition, 1957-82* (Manchester University Press/Gill and Macmillan 1982).

Garland D, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Oxford University Press 2010).

Garnham N, 'How Violent was Eighteenth-Century Ireland?' in Ian O'Donnell and Finbarr McAuley, eds, *Criminal Justice History: Themes and Controversies* (Four Courts 2003).

Garrett PM, (2000) 'The Abnormal Flight: The Migration and Repatriation of Irish Unmarried Mothers,' *Social History*, 25(3), 330-343.

Gavigan SAM, (1989/1990) 'Petit Treason in Eighteenth Century England: Women's Inequality before the Law', *Canadian Journal of Women and the Law*, 3(2), 335-374.

General Accounting Office (1990) '*Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities*', US Government of Accountability Office, GCD-90-57.

Gialanella Valiulis M, (1995) 'Power, Gender and Identity in the Irish Free State', *Journal of Women's History*, 6(4) and 7(1), 117-136.

Gibbons P, Mulryan N, and O'Connor A, (1997) 'Guilty but Insane: The Insanity Defence in Ireland, 1850-1995', *British Journal of Psychiatry*, 170(5), 467-472.

Gillespie R, 'Women and Crime in Seventeenth-Century Ireland', in Margaret MacCurtain and Mary O'Dowd, eds, *Women in Early Modern Ireland* (Edinburgh University Press 1991).

Glueck E, and Glueck S, 'Five Hundred Delinquent Females', in Freda Adler and Rita J Simon, eds, *The Criminology of Deviant Women* (Houghton Miffin 1979).

Godfrey BS, Farrall S, Karstedt S, (2005) 'Explaining Gendered Sentencing Patterns for Violent Men and Women in the Late-Victorian and Edwardian Period', *British Journal of Criminology*, 45(5), 696-720.

Godfrey B, 'Historical and Archival Research Methods', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012).

Gurevich L, (2008) 'Patriarchy? Paternalism? Motherhood Discourses in Trials of Crimes Against Children', *Sociological Perspectives*, 51(3), 515-539.

Gurevich L, (2010) 'Parental Child Murder and Child Abuse in Anglo-American Legal System', *Trauma, Violence and Abuse*, 11(1), 18-26.

Hannan D, and Commins P, 'The Significance of Small-scale Landholders in Ireland's Socio-economic Transformation, in JH Goldthorpe and CT Whelan, eds, *The Development of Industrial Society in Ireland* (Oxford University Press 1992).

Harding S, *The Science Question in Feminism* (Open University Press 1986).

Harding S, ed, *Feminism and Methodology* (Indiana University Press/Open University Press 1987).

Hartman MS, *Victorian Murderesses: A True History of Thirteen Respectable French and English Women Accused of Unspeakable Crimes* (Robson Books 1977).

Haverty A, *Constance Markievicz: An Independent Life* (Pandora 1988).

Hay D, 'Property, Authority and the Criminal Law', in Douglas Hayes, Peter Linebaugh, John G Rule, EP Thompson and Cal Winslow, eds, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (Allen Lane 1975).

Heidensohn F, *Women and Crime* (2nd ed, Macmillan 1996).

Henry B, *Dublin Hanged: Crime, Law Enforcement and Punishment in Late-Eighteenth-Century Dublin* (Irish Academic Press 1994).

Higginbotham PE, (2007) ‘A Reflection on Furman’, *American Journal of Criminal Law*, 34(2), 199-205.

Hoff J, ‘The Impact and Implications of Women’s History’, in Maryann Gialanella Valiulis and Mary O’Dowd, eds, *Women and Irish History: Essays in Honour of Margaret MacCurtain* (Wolfhound Press/Irish American Book Company 1997).

Hood L, *Minnie Dean: Her Life and Crimes* (Penguin 1995).

Hood R, and Hoyle C, *The Death Penalty: A Worldwide Perspective* (3rd ed, Oxford University Press 2002).

hooks b, *Feminist Theory from Margin to Center* (South End Press 1984).

Horan G, (2011) ‘Discourses of Gender and Nationalism in Early Twentieth-Century Germany and Ireland: An Analysis of Four Nationalist Women’s Texts’, *Patterns of Prejudice*, 45(5), 469-497.

Howarth JW, (1992) ‘Feminism, Lawyering and Death Row’, *Southern California Review of Law and Women’s Studies*, 2(1), 401-426.

Howlin N, (2009) ‘Controlling Jury Composition in Nineteenth-Century Ireland’, *Journal of Legal History*, 30(3), 227-261.

Huish R, *The Progress of Crime, or, The Authentic Memoirs of Maria Manning* (Lightning Source 1849/2010).

Idir Mńa (Season 2, Episode 3) (Midas Productions Ltd, Ireland, 2009) (Tuesday 12 October 2010 TG4).

Ignatieff M, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (Macmillan 1978).

Inglis T, (2002) ‘Sexual Transgressions and Scapegoats: A Case Study from Modern Ireland’, *Sexualities*, 5(5), 5-24.

Inglis T, and MacKeogh C, (2012) ‘The Double Bind: Women, Honour and Sexuality in Contemporary Ireland’, *Media, Culture and Society*, 34(1), 68-82.

Jones A, *Women Who Kill* (Feminist Press 2009).

Justice for Magdalenes, ‘Submission to the United Nations Committee Against Torture’ (May 2011).

Justice for Magdalenes, ‘A Critique of Chapter 16 of the Report of the Inter-Departmental Committee to Establish the Facts of Statement Involvement with the Magdalen Laundries’ (JFM Research 2015).

Kavanagh R, *Mamie Cadden: Backstreet Abortionist* (Mercier Press 2005).

Kelly-Gadol J, ‘The Social Relations of the Sexes: Methodological Implications of Women’s History’, in Sandra Harding, ed, *Feminism and Methodology: Social Science Issues* (Indiana University Press/Open University Press 1987).

Kennedy F, *Cottage to Crèche: Family Change in Ireland* (IPA 2001).

Kennefick L, (2011) 'Diminished Responsibility in Ireland: Historical Reflections on the Doctrine and Present-day Analysis of the Law', *Northern Ireland Legal Quarterly*, 62(3), 269-290.

Kenny C, '"You just have to get on with it": The Advance of Women in the Legal Profession, 1901-2013', in Daire Hogan and Colum Kenny, eds, *Changes in Practice and Law* (Four Courts Press 2013).

Kiely DM, *Bloody Women* (Gill and Macmillan 1999).

Kilcommins S, O'Donnell I, O'Sullivan E, and Vaughan B, *Crime, Punishment and the Search for Order in Ireland* (IPA 2004).

Kleck G, (1981) 'Racial Discrimination in Criminal Sentencing: A Critical Evaluation of the Evidence with Additional Evidence on the Death Penalty', *American Sociological Review*, 46(6), 783-805.

Klein D, (1973) 'The Etiology of Female Crime', in Freda Adler and Rita J Simon, eds, *The Criminology of Deviant Women* (Houghton Mifflin 1979).

Knelman J, *Twisting in the Wind: The Murderess and the English Press* (University of Toronto Press 1998).

Kristeva J, *Powers of Horror: An Essay on Abjection* (Columbia University Press 1982).

Lacey N, *Women, Crime and Character: From Moll Flanders to Tess of the D'Urbervilles* (Oxford University Press 2008).

Lambert A, (2008) 'Mediating Crime, Mediating Culture: Nationality, Femininity, Corporeality and Territory in the Schapelle Corby Drugs Case', *Crime Media Culture*, 4(2), 237-255.

Last Dance, dir. by Bruce Beresford (Touchstone Pictures United States 1996).

Lazar MM, (2007) 'Feminist Critical Discourse Analysis: Articulating a Feminist Discourse Practice', *Critical Discourse Studies*, 4(2), 141-164.

Lazar MM, 'Politicizing Gender in Discourse: Feminist Critical Discourse Analysis as a Political Perspective and Praxis', in Michelle M Lazar, ed, *Feminist Critical Discourse Analysis: Gender, Power and Ideology in Discourse* (Palgrave Macmillan 2007).

Lee JJ, 'Women and the Church since the Famine,' in Margaret MacCurtain and Donncha Ó Corráin, eds, *Women in Irish Society: The Historical Dimension* (Women's Press 1978).

Lerner G, *The Creation of Patriarchy* (Oxford University Press 1987).

Liebling A, and Stanko B, (2001) 'Allegiance and Ambivalence: Some Dilemmas in Researching Disorder and Violence', *British Journal of Criminology*, 41(3), 421-430.

Linders A, and van Gundy-Yoder A, (2008) ‘Gall, Gallantry and the Gallows: Capital Punishment and the Social Construction of Gender 1840-1920’, *Gender and Society*, 22(3), 324-348.

Liska AE, (1997) ‘Modelling the Relationships Between Macro Forms of Social Control’, *Annual Review of Sociology*, 23, 39-61.

Logan A, (2013) ‘“Building a New and Better Order?” Women and Jury Service in England and Wales, c.1920-70’, *Women’s History Review*, 22(5), 701-716.

Lohan R, The Treatment of Women Sentenced to Transportation and Penal Servitude, 1790-1898 (MLitt thesis, Trinity College Dublin 1989).

Lombroso C, and Ferrero W, *The Female Offender* (P Owen 1895/1959).

Lowry B, *Crossed Over: A Murder, a Memoir* (Vintage 2002).

Luddy M, *Women in Ireland, 1800-1918: A Documentary History* (Cork University Press 1995).

Luddy, M. (1997) ‘Abandoned Women and Bad Characters: Prostitution in Nineteenth-Century Ireland’, in Alan Hayes and Diane Urquhart, eds, *The Irish Women’s History Reader* (Routledge 2001).

Luddy M, *Philanthropy in Nineteenth-Century Ireland* (Cambridge University Press 1995).

Luddy M, (2001) ‘Moral Rescue and Unmarried Mothers in Ireland in the 1920s’, *Women’s Studies*, 30(6), 797-817.

Luddy M, *Prostitution and Irish Society, 1800-1940* (Cambridge University Press 2007).

Lyons A, and Hunt P, ‘The Effects of Gender on Sentencing: A Case Study of the Dublin Metropolitan Area District Court’, in Mike Tomlinson, Tony Varley and Ciaran McCullagh, eds, *Whose Law and Order?: Aspects of Crime and Social Control in Irish Society* (Sociological Association of Ireland 1988).

MacCurtain M, and O’Dowd M, *Women in Early Modern Ireland* (Edinburgh University Press 1991).

McAuliffe M, ‘Irish Histories: Gender, Women and Sexualities’, in Katherine O’Donnell and Mary McAuliffe, eds, *Palgrave Advances in Irish History* (Palgrave 2009).

McAvoy S, ‘The Regulation of Sexuality in the Irish Free State, 1929-1935’, in Greta Jones and Elizabeth Malcolm, eds, *Medicine, Disease and the State in Ireland, 1650-1940* (Cork University Press 1999).

McAvoy S, ‘Before Cadden: Abortion in Mid-Twentieth-Century Ireland’, in Dermot Keogh, Finbarr O’Shea and Carmel Quinlan, eds, *Ireland in the 1950s: The Lost Decade* (Mercier Press 2004).

McCarthy Á, ‘Hearths, Bodies and Minds: Gender Ideology and Women’s Committal to Enniscorthy Lunatic Asylum, 1916-1925’, in Diane Urquhart and Alan Hayes, eds, *Irish Women’s History* (Irish Academic Press 2004).

McCarthy C, and Todd K, *The Wreck of the Neva: The Horrifying Fate of a Convict Ship and the Irish Women Aboard* (Mercier Press 2013).

McCoole S, *No Ordinary Women: Irish Female Activists in the Revolutionary Years* (O'Brien Press 2004).

McCoole S, *Guns and Chiffon: Women Revolutionaries and Kilmainham Gaol 1916-1923* (O'Brien Press 2004).

McCullagh C, (1991) 'A Tie That Binds: Family and Ideology in Ireland', *Economic and Social Review*, 22(3), 199-211.

McCullagh C, *Crime in Ireland: A Sociological Introduction* (Cork University Press 1996).

McGrath A, (2010) 'The Provocation Predicament', *Hibernian Law Journal*, 9(1), 26-38.

McLoughlin D, 'Women and Sexuality in Nineteenth-Century Ireland', in Alan Hayes and Diane Urquhart, eds, *The Irish Women's History Reader* (Routledge 1994).

McNally G, (2007) 'Probation in Ireland: A Brief History of the Early Years', *Irish Probation Journal*, 4(1) 5-24.

Mahon E, (1994) 'Ireland: A Private Patriarchy?', *Environment and Planning A*, 26(8), 1277-1296.

Malcolm E, 'Women and Madness in Ireland, 1600-1850', in Margaret MacCurtain and Mary O'Dowd, eds, *Women in Early Modern Ireland* (Edinburgh University Press 1991).

Malcolmson RW, 'Infanticide in the Eighteenth Century', in JS Cockburn, ed, *Crime in England 1550-1800* (Methuen 1977).

Manton K, (2011) 'Labour Governments and Capital Punishment, 1924-1970', *Labour History Review*, 41(4), 16-33.

Mara Dodge L, *'Whores and Thieves of the Worst Kind': A Study of Women, Crime, and Prisons, 1835-2000* (Northern Illinois University Press 2006).

Markievicz C, *The Prison Letters of Countess Markievicz* (Esther Roper ed, Virago 1987).

Marland H, 'Getting Away with Murder? Puerperal Insanity, Infanticide and the Defence Plea', in Mark Jackson, ed, *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000* (Ashgate 2002).

Mason B, 'A Gendered Irish Experiment: Grounds for Optimism,' in Frances Heidensohn, ed, *Gender and Justice: New Concepts and Approaches* (Willan 2006).

Mason G, and Stubbs J, 'Feminist Approaches to Criminological Research', in David Gadd, Susanne Karstedt and Steven F Messner, eds, *The Sage Handbook of Criminological Research Methods* (Sage 2012).

Matthews A, *Renegades: Irish Republican Women, 1900-1922* (Mercier Press 2000).

Miller V, (2004) '"The last vestige of institutionalized sexism?" Paternalism, Equal Rights and the Death Penalty in Twentieth and Twenty-First Century Sunbelt America: The Case for Florida', *Journal of American Studies*, 38(3), 391-424.

Mohr T, (2006) 'The Rights of Women under the Constitution of the Irish Free State', *Irish Jurist*, 41(1), 20-59.

Monster, dir. by Patty Jenkins (Media 8 Entertainment and DEJ Productions United States 2003).

Morris A, and Wilczynski A, 'Rocking the Cradle: Mothers Who Kill Their Children', in Helen Birch, ed, *Moving Targets: Women, Murder and Representation* (Virago 1993).

Morrissey B, *When Women Kill: Questions of Agency and Subjectivity* (Routledge 2003).

Moulds EF, (1978) 'Chivalry and Paternalism: Disparities of Treatment in the Criminal Justice System', *Western Political Quarterly*, 31(3), 416-430.

Muncie J, 'Discourse Analysis', in Victor Jupp, ed, *The Sage Dictionary of Social Research Methods* (Sage 2006).

Murphy C, *The Women's Suffrage Movement and Irish Society in the Early Twentieth Century* (Harvester Wheatsheaf 1989).

Murphy T, 'Bursting Binary Bubbles', in John Morison and Christine Bell, eds, *Tall Stories? Reading Law and Literature* (Dartmouth 1996).

Murray Greenwood F, and Boissery B, *Uncertain Justice: Canadian Women and Capital Punishment, 1754-1953* (Dundurn 2000).

Naffine N, *Feminism and Criminology* (Polity 1997).

Naish C, *Death Comes to the Maiden: Sex and Execution, 1431-1933* (Routledge 1991).

Naylor B, (1990) 'Media Images of Women Who Kill', *Legal Services Bulletin*, 15(1), 4-8.

Neumayer E, (2008) 'Death Penalty: The Political Foundations of the Global Trend Towards Abolition', *Human Rights Review*, 9(2), 241-268.

Newton Ainsley J, (2000) '"Some Mysterious Agency": Women, Violent Crime and the Insanity Acquittal in the Victorian Courtroom', *Canadian Journal of History*, 35(1), 37-55.

O'Brien G, Capital Punishment in Ireland, 1922-1964, NM Dawson, ed, *Reflections on Law and History* (Four Courts Press 2006).

O'Connor N, *The Black Widow: The Catherine Nevin Story* (O'Brien 2000).

O'Donnell B, *Should Women Hang?* (WH Allen 1956).

O'Donnell I, (2005) 'Lethal Violence in Ireland, 1841 to 2003: Famine, Celibacy and Parental Pacification', *British Journal of Criminology*, 45(5), 671-695.

O'Donnell I, (2005) 'Crime and Justice in the Republic of Ireland', *European Journal of Criminology*, 2(1), 99-131.

O'Donnell I, (2010) 'Killing in Ireland at the Turn of the Centuries: Contexts, Consequences and Civilising Processes', *Irish Economic and Social History*, 37(1), 53-74.

O'Donnell I, 'Deflecting the Law from its Course: Capital Punishment and Clemency in Ireland, 1923-1990' (32nd Hugh M Fitzpatrick Lecture in Legal Bibliography, Bar Library of Ireland, 1 December 2015).

O'Donovan K, (1984) 'The Medicalisation of Infanticide', *Criminal Law Review*, May, 259-264.

O'Faolain S, *Constance Markievicz* (Hutchinson 1987).

Ó Longaigh S, *Emergency Law in Independent Ireland, 1922-48* (Four Courts Press 2006).

O'Mahony J, (2001) 'Not so Nice: The Treaty of Nice, the International Criminal Court, the Abolition of the Death Penalty – the 2001 Referendum Experience', *Irish Political Studies*, 16(1), 201-213.

O'Malley T, (1995) 'Sentencing Murderers: The Case for Relocating Discretion', *Irish Criminal Law Journal*, 5(1), 31-66.

O'Sullivan C, (2000) 'Has the Real Monster been Let off the Hook?' *Hibernian Law Journal*, 0(2), 226-255.

O'Sullivan C, (2008) 'The Nun, the Rape Charge, and the Miscarriage of Justice: the Case of Nora Wall', *Northern Ireland Legal Quarterly*, 59(3), 305-326.

O'Sullivan E, 'Juvenile Justice and the Regulation of the Poor: "restored to virtue, to society and to God"', in Ivana Bacik and Michael O'Connell, eds, *Crime and Poverty in Ireland* (Round Hall Sweet & Maxwell 1998).

O'Sullivan E, and O'Donnell I, *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012).

O'Sullivan R, *Goodbye Lizzie Borden* (Chatto and Windus 1975).

Orel H, *The Unknown Thomas Hardy: Lesser-known Aspects of Hardy's Life and Career* (Harvester 1987).

Oshinsky DM, *Capital Punishment on Trial: Furman v Georgia and the Death Penalty in Modern American* (University Press of Kansas 2010).

Oxley D, (2004) 'Living Standards of Women in Prefamine Ireland', *Social Science History*, 28(2), 271-295.

Pearson K, (2007) 'The Trouble with Aileen Wuornos: Feminism's "First Serial Killer"', *Communication and Critical/Cultural Studies*, 4(3), 256-275.

Pegg S, (2009) 'Madness is a Woman: Constance Kent and Victorian Constructions of Female Insanity', *Liverpool Law Review*, 30(3), 207-223.

Phillips S, (2012) 'Continued Racial Disparities in the Capital of Capital Punishment: The Rosenthal Era', *Houston Law Review*, 50(1), 131.

Pollak O, *The Criminality of Women (*AS Barnes 1961).

Potter H, *Hanging in Judgment: Religion and the Death Penalty in England from the Bloody Code to Abolition* (SCM 1993).

Potter J, 'Discourse Analysis', in Melissa Hardy and Alan Bryman, eds, *Handbook of Data Analysis* (Sage 2004).

Powell FW, The Politics of Irish Social Policy, 1600-1990 (E Mellen Press 1992).

Prior P, (2005) 'Murder and Madness: Gender and the Insanity Defence in Nineteenth-Century Ireland', *New Hibernia Review*, 9(4), 19-36.

Prior P, *Madness and Murder: Gender, Crime and Mental Disorder in Nineteenth-Century Ireland* (Irish Academic Press 2008).

Prone T, *Irish Murders: Shocking True Stories* (Poolbeg 1992).

Quinlan C, *Inside: Ireland's Women's Prisons, Past and Present* (Irish Academic Press 2011).

Quinlan C, 'Women, Imprisonment and Social Control', in Deirdre Healy, Claire Hamilton, Yvonne Daly and Michelle Butler (eds) *The Routledge Handbook of Irish Criminology* (Routledge 2015).

Raftery M, and O'Sullivan E, *Suffer the Little Children: The Inside Story of Ireland's Industrial Schools* (New Island 1999).

Ramey J, (2004) 'The Bloody Blonde and the Marble Woman: Gender and Power in the Case of Ruth Snyder', *Journal of Social History*, 37(3), 625-650.

Rapaport E, (1990) 'Some Questions About Gender and the Death Penalty', *Golden Gate University Law Review*, 20(3), 501-565.

Rapaport E, (1991) 'The Death Penalty and Gender Discrimination', *Law and Society Review*, 25(2), 367-384.

Rapaport E, (1995) 'Capital Murder and the Domestic Discount: A Study of Capital Domestic Murder in the Post-Furman Era', *Southern Methodist University Law Review*, 49(5), 1508-1546.

Rattigan C, (2008) '"I thought from her appearance that she was in the family way": Detecting Infanticide Cases in Ireland, 1900-21', *Family and Community History*, 11(2), 135-151.

Rattigan C, (2010) '"Half mad at the time": Unmarried mothers and infanticide in Ireland, 1922-1950', in Catherine Cox and Maria Luddy (eds) *Cultures of Care in Irish Medical History* (Palgrave Macmillan 2010).

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

Reddy T, *Murder Will Out: A Book of Irish Murder Cases* (Gill and Macmillan 1990).

Reddy T, 'The Body in Hume Street', in Kevin O'Connor, ed, *Thou Shalt Not Kill* (Gill and Macmillan 1995).

Rifkin J, (1980) 'Toward a Theory of Law and Patriarchy', *Harvard Women's Law Journal*, 83(1), 83-95.

Robertson S, (2005) '"What's Law Got to do with It?" Legal Records and Sexual Histories', *Journal of the History of Sexuality*, 14(1/2), 161-185.

Robinson M, 'Women and the New Irish State', in Margaret MacCurtain and Donncha Ó Corráin, eds, *Women in Irish Society: The Historical Dimension* (Women's Press 1978).

Rogan M, *Prison Policy in Ireland: Politics, Penal Welfarism and Political Imprisonment* (Routledge 2011).

Ryan L, (2002) 'Sexualising Emigration: Discourses of Irish Female Emigration in the 1930s', *Women's Studies International Forum*, 25(1), 51-65.

Ryan L, 'The Press, The Police and Prosecution: Perspectives on Infanticide in the 1920s', in Diane Urquhart and Alan Hayes, eds, *Irish Women's History* (Irish Academic Press 2004).

Ryan, L (2007) '"Who do you think you are?" Irish Nurses Encountering Ethnicity and Constructing Identity in Britain', *Ethnic and Racial Studies*, 30(3), 416-438.

Salvucci J, (2011) 'Femininity and the Electric Chair: An Equal Protection Challenge to Texas', *Boston College Third World Journal*, 31(2), 405-437.

Sanghvi R, and Nicolson D, (1993) 'Battered Women and Provocation: The Implications of R v Ahluwalia', *Criminal Law Review*, October, 728-738.

Sapsford R, 'Discourse Research', in Roger Sapsford and Victor Jupp, eds, *Data Collection and Analysis* (Sage/Open University 2006).

Sawyer RK, (2002) 'A Discourse on Discourse: An Archaeological History of an Intellectual Concept', *Cultural Studies*, 16(3), 433-456.

Schmall L, (1996) 'Forgiving Guin Garcia: Women, the Death Penalty and Commutation', *Wisconsin Women's Law Journal*, 11(2), 283-326.

Schmidt JR (2007) 'The EU Campaign Against the Death Penalty', *Survivor*, 49(4), 123-134.

Scott JW, (1986) 'Gender: A Useful Category of Historical Analysis', *American Historical Review*, 91(5), 1053-1075.

Scott J, *A Matter of Record: Documentary Sources in Social Research* (Polity 1990).

Seal, L (2009) 'Issues of Gender and Class in the Mirror Newspaper's Campaign for the Release of Edith Chubb', *Crime Media Culture*, 5(1), 57-78.

Seal L, (2009) 'Discourses of Single Women Accused of Murder: Mid-Twentieth-Century Constructions of "Lesbians" and "Spinsters"', *Women's Studies International Forum*, 32(3), 209-218.

Seal L, Women, *Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010).

Seal L, (2011) 'Ruth Ellis and the Public Contestation of the Death Penalty', *Howard Journal of Criminal Justice*, 50(5), 492-504.

Seal L, (2012) 'Emotion and Allegiance in Researching Four Mid-20th-Century Cases of Women Accused of Murder', *Qualitative Research*, 12(6) 686-701.

Seal L, *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory* (Routledge 2014).

Seal L, (2014) 'Imagined Communities and the Death Penalty in Britain, 1930-65', *British Journal of Criminology*, 54(5), 908-927.

Shapiro A, (2000) 'Unequal Before the Law: Men, Women and the Death Penalty', *Journal of Gender, Social Policy and the Law*, 8(2), 428-470.

Shatz SF, and Shatz NR, (2012) 'Chivalry is Not Dead: Murder, Gender, and the Death Penalty', *Berkeley Journal of Gender, Law and Justice*, 27(1), 64-112.

Shipman M, *'The Penalty is Death': US Newspaper Coverage of Women's Executions* (University of Missouri Press 2002).

Showalter E, *The Female Malady: Women, Madness and English Culture, 1830-1980* (Virago 1987).

Skedd S, 'Homicide', in Deirdre Healy, Claire Hamilton, Yvonne Daly and Michelle Butler, eds, (forthcoming) *Routledge Handbook of Irish Criminology* (Routledge 2016).

Smart C, Women, *Crime and Criminology: A Feminist Critique* (Routledge and Kegan Paul 1977).

Smart C, 'Feminist Approaches to Criminology or Postmodern Woman Meets Atavistic Man', in Loraine Gelsthorpe and Allison Morris, eds, *Feminist Perspectives in Criminology* (Open University Press 1990).

Smart C, 'Legal Regulation or Male Control?', in Carol Smart (ed) *Law, Crime and Sexuality: Essays in Feminism* (Sage 1995).

Smart C, *Law, Crime and Sexuality: Essays in Feminism* (Sage 1995).

Smith JM, (2004) 'The Politics of Sexual Knowledge: The Origins of Ireland Containment Culture and Carrigan Report', *Journal of the History of Sexuality*, 13(2), 208-233.

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

Steel J, '"And Behind Him a Wicked Hag Did Stalk": From Maiden to Mother, Ireland as Woman through the Male Psyche', in Louise Ryan and Margaret Ward, eds, *Irish Women and Nationalism* (Irish Academic Press 2004).

Streib VL, (1990) 'Death Penalty for Women Offenders', *University of Cincinnati Law Review*, 58(3), 845-880.

Streib VL, (1997) 'America's Aversion to Executing Women', *Women's Law Journal*, 1, 1-8.

Streib VL, (2002) 'Rare and Inconsistent: The Death Penalty for Women', *Fordham Urban Law Journal*, 33(2), 609-636.

Streib VL, *The Fairer Death: Executing Women in Ohio* (Ohio University Press 2006).

Streib VL, (2012) 'Death Penalty for Female Offenders, January 1, 1973, through December 31, 2011', Issue 66 (Death Penalty Information Center).

Summerscale K, *The Suspicions of Mr Whicher: The Murder at Road Hill House* (Bloomsbury 2011).

Kent H, *Burial Rites* (Picador 2013).

Thomas WI, (1923) 'The Unadjusted Girl', in Piers Beirne, ed, *The Chicago School of Criminology* (Routledge 2006).

Tomlinson M, and Rolston B, 'Spectators at the Carnival of Reaction? Analysing Political Crime in Ireland', in M Kelly and L O'Dowd, J Wickham, eds, Power, *Conflict and Inequality* (Turoe Press 1982).

Ussher JM, (2003) 'The Role of Premenstrual Disphoric Disorder in the Subjectification of Women', *Journal of Medical Humanities*, 24(1/2), 131.

Vaughan WE, *Murder Trials in Ireland, 1836-1914* (Four Courts Press 2009).

Wade S, *Escapes from the Noose* (Amberley 2010).

Walby S, *Theorizing Patriarchy* (Basil Blackwell 1990).

Walker LEA, (2006) Battered Woman Syndrome, *Annals of the New York Academy of Sciences*, 1087(1) 142-157.

Ward M, *UnManageable Revolutionaries: Women and Irish Nationalism* (Pluto Press 1995).

Ward M, *Hanna Sheehy-Skeffington: A Life* (Attic Press 1997).

Wardle C, (2007) 'Monsters and Angels: Visual Press Coverage of Child Murders in the USA and UK, 1930-2000', *Journalism*, 8(3), 263-284.

Weisberg R, (1983) 'Deregulating Death,' *Supreme Court Review*, 305-396.

Whitman C, (2001) 'The Death Penalty as the Will of the People', *Peace Review*, 13(4), 519-523.

Wiener M, *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England* (Cambridge University Press 2004).

Wilczynski A, (1997) 'Mad or Bad? Child-Killers, Gender and the Courts', *British Journal of Criminology*, 37(3), 419-436.

Williams MR and Holcomb JE, (2001) 'Racial Disparity and Death Sentences in Ohio,' *Journal of Criminal Justice*, 29(3), 207-218.

Wilson PR, *Jean Lee: The Last Woman Hanged in Australia* (Random House Australia 1997).

Winter J, (2002) 'The Truth Will Out: The Role of Judicial Advocacy and Gender in Verdict Construction', *Social and Legal Studies*, 11(3), 343-367.

Wood JC, (2009) '"Those Who Have Had Trouble Can Sympathise With You": Press Writing, Reader Responses and a Murder Trial in Interwar Britain', *Journal of Social History*, 43(2), 439-462.

Wood JC, *The Most Remarkable Women in England: Poison, Celebrity and the Trials of Beatrice Pace* (Manchester University Press 2012).

Woodward NWC, (2006) 'Transportation Convictions During the Great Irish Famine', *Journal of Interdisciplinary History*, 37(1), 59-87.

World Health Organisation, *Female Genital Mutilation: A Joint WHO/UNICEF/UNFPA Statement* (WHO 1997).

Worrall A, Offending Women: Female Lawbreakers and the Criminal Justice Systems (Routledge 1990).

Worrall A, 'Discourse Analysis', in Eugene McLaughlin and John Muncie, eds, *The Sage Handbook of Criminology* (Sage 2005).

Yield to the Night, dir. by J Lee Thompson (Kenwood Productions United Kingdom 1956).

Zedner L, *Women, Crime and Custody in Victorian England* (Oxford University Press 1991).