

Historical Gendered Institutional Violence: A Research Agenda for Criminologists

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Abstract

This article considers the phenomenon of historical gendered institutional harm, examining the widespread incarceration of women and girls in Ireland through the decades following independence in 1922. In this period, thousands of women and girls were confined in a network of sites including Magdalene Laundries and Mother and Baby Homes. The article considers the responses to this history, focusing on those fields which concern themselves with matters of “wrongdoing” and “harm,” responses grounded in law and legalism. We explore both the utility and the limits of these approaches before proposing a criminological research agenda which draws on the centrality of the state in the perpetration of gendered violence. Although Ireland has become a by-word as a case of historical institutional abuse internationally, it remains remarkably understudied by criminologists. The article explores how the Irish example can speak to the discipline of criminology by forcing us to reimagine how we conceive of gendered harms and state-perpetrated harms.

Keywords

gender, Ireland, transitional justice, state crime, Magdalene Laundry, Mother and Baby Home

Introduction

Over the last two decades, past institutional abuses perpetrated against women and children have regularly been in the spotlight in Irish political, civic, and cultural life.

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On the international stage, Ireland has become infamous as a site of widespread institutional abuse perpetrated in the 20th century. Survivors and scholars tell of an architecture of containment for marginalized populations comprised of institutions such as Industrial Schools, Magdalene Laundries, Mother and Baby Homes, and psychiatric hospitals, most of which were operated collaboratively by the Catholic Church/state establishment. These sites formed a sprawling network that grew in the decades post-independence until in the 1950s, 1% of Ireland's population was subject to some form of containment (O'Sullivan & O'Donnell, 2007). A core function of this system was to control female sexuality. This article considers the (still-emerging) body of academic work which has been produced in response to this history and the state responses to survivors' claims for justice. Although scholars across the social sciences and humanities have engaged productively with Ireland's history of institutional abuse (see, e.g., Fischer, 2016; Garrett, 2000; Gleeson, 2017; Inglis, 1998; Lowry, 2022; O'Donnell et al., 2022; Pine, 2011), traces of the Irish case are only lightly to be found in criminological inquiry. Perhaps this is no surprise given criminology's history of ignoring studies which have women as their focus (Daly & Chesney-Lind, 1988; Cook, 2016). It also echoes the discipline's tendency to see violence in the street, in the home, and by the state as "separate and separable" (Walklate, 2018, p. 621). Criminology's failure to engage with Ireland's gendered mass confinement may also relate to the perceived geographic irrelevance of Ireland and its deviation from the template of Britain and the United States (Brangan, 2022). Further compounding the invisibility of the case is its characterization as "historical" within a discipline that often narrows its focus to the present (Lawrence, 2012).

Criminology's relative silence on the mass institutionalization of women and girls is particularly striking given the engagement of other disciplines which have, at their core, questions of "harm" and "wrongdoing." Discourses of human rights have underpinned much academic and activist work, as the harms inflicted have been framed as violations of individual rights. Human rights discourse also provides a useful language for articulating the ongoing harms suffered by survivors in the present (O'Rourke et al., 2018). Some scholars have approached historical institutional abuse from a transitional justice perspective. Transitional justice has its normative and methodological roots in law, specifically in the context of societies moving from a violent authoritarian past to a more democratic and peaceful future. Scholars have argued that it is useful to understand and evaluate states' responses to historical institutional abuse through this lens, even as governments often fail to fully commit to its tenets (Gleeson & Ring, 2020; McAlinden & Naylor, 2016). Commentators point to a coherent pattern of state responses under this framework including: state apologies; the establishment of statutory redress schemes; (limited) criminal prosecutions; and the creation of public inquiries (Enright & Ring, 2020). To date, the criminal law has proved less than effective in holding actors or states accountable for the harms suffered by incarcerated Magdalene women and girls. This is not for want of efforts by survivors; appeals to criminal justice have been made by survivors for years. The criminal investigation into sexual and physical abuse at St Joseph's Industrial School was an important part of the background to the Irish government's issuing of the world's first apology for historical

institutional child abuse in 1999 (RTÉ, 1999). Survivors, scholars, and activists have positioned those who experienced institutionalization as victims of crimes and pointed to the urgency of prosecutions for offenses including assault, false imprisonment, kidnapping, and sexual assault. However, criminal prosecutions have focused almost exclusively on child sexual abuse, leaving survivors of Magdalene Laundries and Mother and Baby Homes to pursue justice through civil litigation or through engagement with official inquiries or redress schemes.

Pushing beyond these frameworks, we argue that the incarceration of significant numbers of women and girls in Ireland for much of the 20th century—and, importantly, the contemporary state's responses to this in the present—can complement and complicate understandings of harm in criminology, by forcing us to interrogate how we conceive of gendered harms and state-perpetrated harms. Criminological analysis can further our understanding of why and how such violence was perpetrated and tolerated. This would require grappling with, for example, the role of institutions in reproducing heteronormative and patriarchal gender norms; the structures, cultures, and practices of religious orders; the use of shaming techniques to control marginalized people, especially women and girls, outside and inside the institution's walls; the nature and scale of surveillance by family members, neighbors, teachers and gardaí [police], and the role of the state in facilitating institutionalized gendered violence. Insights can be gleaned from critical criminology, namely, work on state crime and zemiology. Thinking about historical institutional abuse can challenge binaries at the heart of criminology, such as individual wrongdoing versus state wrongdoing, the past as distinct from the present, and the perceived discreteness of forms of gendered violence.

The Irish experience can offer new ways of recognizing gendered harm that center its embeddedness within state structures. These insights can offer new modes of inquiry for other cases internationally. Ireland is not an outlier in the existence of abusive carceral institutions beyond the prison. There are international comparators, nations in which Magdalene Laundries also flourished (e.g., Finnegan, 2002; Jones & Record, 2014; Thor, 2019) or in which maternity homes were a feature of the institutional landscape (e.g., Cox, 2012; Greenlees, 2015). Other jurisdictions have also grappled with the legacies of institutional abuse, including Northern Ireland (McCormick & O'Connell, 2021), Australia (Royal Commission into Institutional Responses to Child Sexual Abuse, 2017) and Canada (Truth and Reconciliation Commission of Canada, 2015). Across these international comparators, with some honorable exceptions (e.g., McDonald, 2020; Woolford & Hounslow, 2018), there is arguably a similar criminological silence. We therefore make no claims for Irish exceptionalism. However, we do note that the Irish case is remarkable in the intensity of institutionalization through the 20th century particularly as other jurisdictions saw such forms of confinement on the wane (O'Donnell & O'Sullivan, 2020) as well as the particular church-state structure of the Irish case which marks it out (McAlinden, 2013). Despite these features of the Irish case, claims of Irish exceptionalism remain unhelpful. Instead, these characteristics of Irish institutional abuse offer points of comparison, levers which can be used to meaningfully establish a comparative project. As

Brangan (2020, p. 598) suggested, “comparative studies pitched at a grounded level can help us better understand differences in punishment and its social meanings from one context to the next.” While Ireland’s own experience remains just that, it is also the case that a deeper criminological understanding of this phenomenon can illuminate similar histories internationally. This article suggests a novel criminological perspective that marks the Irish case as one of international significance. The article proceeds by setting out this case, sketching Ireland’s 20th-century experience of gendered mass institutionalization. The article then considers the responses to this history, looking particularly at those fields which focus on matters of “wrongdoing” and “harm,” particularly those clustered under the banner of law and legalism such as the criminal law and transitional justice. We explore both the utility and the limits of these responses before turning to the discipline of criminology and proposing a criminological research agenda which draws on the centrality of the state in the perpetration of gendered violence. We conclude by proposing some criminological questions and suggesting how the concept of state-perpetrated gender violence can be employed elsewhere.

The Case of Ireland: Magdalene Laundries and Mother and Baby Homes

Irish affairs do not typically attract significant coverage within the pages of the *New York Times*. Yet for many years, this publication has regularly carried reports on the unfolding saga of Ireland’s history of the confinement and abuse of women and children (e.g., Banville, 2009; Barry, 2017; Dalby, 2013). The Irish case has come to be the most well-known case of historical institutional abuse internationally, depicted in feature films with a global audience (Frears, 2013; Mullan, 2002). For reasons of space, we offer only a brief overview of these institutions (for more detailed context, see Ring et al., 2022; Smith, 2007), however, a potted history might commence with the attainment of independence from Britain in 1922. Anxious to create and preserve its identity as different to and better than the colonizer, the new Irish state inscribed a repressive Catholic gender order on the bodies and lives of women and girls. It did so by using the network of massive Victorian institutions run by Catholic religious orders which had provided basic levels of relief to the poor in the wake of the famines of the 19th century. This article focuses on those explicitly gendered institutions—Magdalene Laundries and Mother and Baby Homes—in which only women and girls were confined (although we recognize that Industrial Schools were also the product of a Catholic gender order that stigmatized the children of unmarried mothers).

Magdalene Laundries were originally established in the 18th century as lay-run refuges for sex workers, before being consolidated under Catholic Church ownership through the 19th century (Luddy, 2007). Following independence, reliance on these institutions for the policing of Catholic gender norms grew exponentially. Inmates were no longer “fallen” women in need of redemption and care, instead they were stigmatized transgressors of a nationalist and Catholic moral code who could be exploited as a source of free labor. The Laundries targeted working-class women and

girls. Reasons for incarceration were shockingly broad, from being in an “unsuitable” romantic relationship, being considered attractive, being a victim of a sexual assault, through to engagement in sex work. They also detained women and girls who were simply a burden on their families. Magdalene Laundries were a highly visible and integrated part of the Irish economy delivering laundry services to both state and society, the profits of which were retained by the religious orders. It is estimated that from 1922 to 1996, at least 14,000 women and girls were incarcerated in such institutions (Gleeson, 2017). Women experienced these institutions as prisons (O’Donnell et al., 2021). The buildings were designed to contain, with barred windows and high walls. On entering, a new identity was forced on women and girls. They were made to strip, put on a work uniform, and bear a new, religious, name (sometimes a number). The strict work regime was enforced through disciplinary measures including hair cutting, deprivation of meals, solitary confinement, physical abuse, and humiliation rituals. Those who escaped could be arrested (O’Rourke, 2015).

Mother and Baby Homes were a policy innovation of the post-independence years, with Bessborough in Cork, owned and operated by the Sacred Hearts of Jesus and Mary, the first such home to be opened in 1922. They were established to combat perceived rising rates of illegitimacy and to facilitate the local and international adoption and fostering of children. Unlike Laundries, which targeted working-class women, Mother and Baby Homes were aimed at pregnant unmarried middle-class women and girls, pregnant for the first time and not considered at risk of a second “fall.” Survivors’ testimony of being denied pain relief in labor, forced family separation, beatings, torture, forced work, imprisonment, neglect, and participation in medical trials, all evidence an extremely punitive system (Mother and Baby Homes Commission of Investigation, 2021; see also Goulding, 1998). In these austere maternity homes, the nuns often removed the baby from its mother to be adopted, fostered, or placed in an Industrial School (a fate which was typical for babies of mixed-race heritage). Many infants (at least 15%) perished in the institutions (Mother and Baby Homes Commission of Investigation, 2021).

Crucially, sexually “suspect” women and girls in the newly independent state were subject to the language of criminalization. Garrett (2000) has explored the discursive construction of unmarried mothers as criminals. Within this imaginary, the confinement of these women seemed entirely reasonable. Yet, as official inquiries such as the McAleese Report (2013) found, “criminal” women (women formally under the control of the criminal justice system) were a minority within the institutions. Women entered institutions such as Laundries and to a lesser extent Mother and Baby Homes on remand, on probation, as a condition of a suspended sentence, or on release from prison (Black, 2022a). While these women represented a small number of the total population confined in these sites, the language of criminalization tainted all women so detained.

The drivers leading to such intense levels of institutionalization emanated from the particular political economy of post-independence Ireland in which the Catholic Church was dominant, and in which various incentives arose from the preservation of the rural farming family (O’Sullivan & O’Donnell, 2012). Following the peak of

institutionalization in the 1950s, their use gradually tapered. For the sites specifically targeting women and girls, developments such as the establishment of unmarried mother's allowance, the gradual acceptance of unwed motherhood, and the advent of cheap modern washing machines (Finnegan, 2002) were pivotal factors in their decline, but they (and the threat of them) remained a powerful tool for the disciplining of all women and girls. The last Laundry closed its doors in 1996 and the last Mother and Baby Home closed in 2006. However de-institutionalization did not mean the end of stigma and exclusion for women who had been incarcerated in a Laundry, with some women continuing to live in institutional settings and adopted people being treated differently under Irish law (O'Rourke et al., 2018). Just as the Irish institutional era was in its death throes, beginning in the 1990s greater scrutiny was directed toward the religious organizations which operated many of these sites. Media interest slowly gathered. Stories of real estate development and the exhumation of the bodies of women buried in convent grounds found traction.¹ A number of groundbreaking documentaries offered mounting evidence against the Catholic Church as stories of systematic abuse, child sexual abuse, neglect, and the confinement of women spilled forth (Humphreys, 1998; Raftery, 1999). As the voices of survivors came to the fore, pressure mounted on the Irish government to investigate. Over the past two decades, a series of inquiries have tackled discrete institution types—in 2009 the Report of the Commission to Inquire into Child Abuse was published on abuse in Industrial and Reformatory Schools (Commission to Inquire Into Child Abuse, 2009), in 2013 the McAleese Report (McAleese Report, 2013) was published on the facts of state involvement with the Magdalene Laundries, and in 2021 the final report of the Commission of Investigation into Mother and Baby Homes was published (Mother and Baby Homes Commission of Investigation, 2021). For over 20 years, Irish political, civic, and cultural figures have sought to respond to the nation's institutional legacy (Enright & Ring, 2020). Across this period also, Irish academia has grappled with this history and the state's responses to it.

Responding to Historical Gendered Institutional Abuse

Law and Legalism

One prominent thread in the response to the institutional confinement of women and girls in Ireland has been the deployment of law and legalism. There have been calls to hold the perpetrators of institutional abuse accountable under criminal law. Some perpetrators of sexual abuse against children in Industrial Schools have been convicted following individual reports made by adult survivors (Ring et al., 2022). However, the McAleese Report (2013) into the Laundries made no recommendations about prosecution or accountability. Because the Report made no findings as to the abuse of women (holding that this was "outside its remit"), the state has maintained that there is no "credible evidence" that women were detained for long periods, tortured, or subjected to criminal violence (O'Rourke, 2015, p. 159). In 2014, the UN Human Rights Committee (2014, p. 4), addressing the institutional abuse of women and children,

noted that “It regrets the failure to identify all perpetrators of the violations that occurred, the low number of prosecutions, and the failure to provide full and effective remedies.” The body advised the state “to prosecute and punish the perpetrators with penalties commensurate with the gravity of the offence” (2014, p. 4). In 2017 (UN Committee against Torture, 2017, p. 3), criticism was again directed at Ireland’s failure to act on these recommendations. When questioned on this, the then Minister for Justice and Equality responded that the Report “was not intended to be a criminal investigation” (Shatter, 2013). More recently, the International Criminal Court has been asked to investigate whether abuses perpetrated across these religious institutions constitutes “crimes against humanity,” citing compelling evidence of torture outlined in the recent government-commissioned inquiries. A referral has been made to the Office of the Prosecutor to carry out a preliminary investigation (KRW Law, 2021). Despite these calls for accountability, the capacity of the criminal law to satisfactorily respond to the needs of affected people, let alone to grapple with the broader societal questions of why and how historical institutional gendered violence was perpetrated, is severely limited. Criminal law fails to see the full complexity of the culpability and harms involved in historical gendered abuses that took place in the Magdalene Laundries and Mother and Baby Homes. Focused as it is on individual responsibility, it cannot grapple with the larger questions provoked by institutional abuse.²

Given the failures of criminal process, survivors have been forced to engage with the processes created by the state to investigate alleged wrongdoing and provide monetary redress. These processes have been deeply flawed. To illustrate, survivors of the Laundries were contractually required to waive their right of legal action against the state as a condition of participation in redress (Enright & Ring, 2020). Women were required to accept this decision before the state provided any guarantees on welfare or health provision. The reports resulting from the state-commissioned investigations have left much to be desired. The McAleese Report (which was not an independent inquiry) marginalized survivors’ voices, presenting women’s accounts as fragmentary “stories” (Gallen & Gleeson, 2018). Similar criticisms have been raised in relation to the Commission of Investigation into Mother and Baby Homes Commission of Investigation (2021) (Enright, 2021).

Transitional Justice

Transitional justice has been especially prominent in the criticisms of the Irish state’s successive inquiries and redress schemes. These state-commissioned investigations have been heavily criticized by survivors for creating official histories that minimize state responsibility, preserving the status of state and church actors, reducing reparations to monetary redress, containing state and church actors’ exposure to legal liability, and creating hierarchies of victimhood (see the work of the Clann Project, n.d.; Enright & Ring, 2020; O’Donnell et al., 2021; Reclaiming Self, 2017; Ring et al., 2022). Against these failings, transitional justice has seemed to offer a more satisfying approach to dealing with the past in the present. Transitional justice is a relatively new field of political and legal-institutional practice and academic inquiry. Over the past

three decades it has grown from its roots in activism and practice in addressing historic human rights abuses to encompass an international academic field and a range of processes aimed at securing peaceful transition from conflict, or gross rights violations, toward peaceful stabilized democracy (Arthur, 2009). Delivery of transitional justice centers on its four 'pillars': investigation and truth-seeking, accountability, reparation, and guarantees of non-repetition (and reconciliation) (UN Secretary-General, 2004). Scholars have argued that transitional justice can be useful to understand and evaluate the Irish state's responses to historical institutional abuse (Gallen, 2020; McAlinden & Naylor, 2016). They point to a repeated pattern of state responses, namely, political apologies on behalf of the state; the establishment of statutory redress schemes; (limited) criminal prosecutions; and the creation of public inquiries (Enright & Ring, 2020; McAlinden & Naylor, 2016).

Transitional justice is rooted in legal discourse and legal methods, and as such can be used to challenge state legal responses such as inquiries. Survivors and allies seek to harness the power of law to contest official histories of past abuses and resist attempts to minimize injuries (and appropriate redress). To give a recent example, the Final Report of the Mother and Baby Homes Commission of Investigation was published in January 2021. It was met with a wave of negative reaction from survivors, advocates and allies. Much of this centered on the dissonance between the Executive Summary and the testimony donated by affected persons. Survivors contested the Report's findings as contradicting their lived experience *and* the testimony they had given the Commission. In the months and weeks after the Report's publication, affected people and advocacy groups worked to recover and share full accounts of the experiences they had recounted to this body (e.g., Linehan/*Irish Times*, 2021). A group of academic lawyers produced a draft alternative Executive Summary (Enright, 2021). Using the domestic legal frameworks in place at the time of the operation of the Homes, and the testimony quoted in the Commission's own Confidential Committee Report, the authors reached vastly different conclusions to the Commission. They found breaches of human and constitutional rights including involuntary detention, evidence of forced adoption and inhuman and degrading treatment. Perhaps most important, for present purposes, is the legal action taken by eight survivors in respect of the Final Report. Survivors Philomena Lee and Mary Harney sued the Minister arguing that their legal rights under the legislation establishing Commissions of Investigation had been breached.³ The claimed, *inter alia*, that they should have been provided with the relevant extracts of the draft report and had the opportunity to make submissions before it was finalized. Both women argued that they were readily identifiable in the Report, despite not being named, and that under the relevant legislation they should have been provided with copies and afforded the right to reply (sections 34 and 35 of the Commission of Investigation Act 2004). This right is crucial for any process aimed at establishing an accurate and reliable record and which claims to respect the rights of affected people. The case led to the state's admittance that it had breached the women's rights under the legislation. As part of the settlement agreement, the state agreed to publish a statement alongside the Report which admits that the women's rights were breached and that the accuracy of some of the Report's key

findings are contested by survivors (Department of Children, Equality, Disability, Integration and Youth, 2021). For survivors and advocates, this shows that the Report is “fatally flawed” and that any accompanying redress scheme must be radically revised (Clann Project, n.d.). Thus, law and legal process have been used effectively to undermine and contest findings where they are at odds with the evidence provided and experiences of survivors.

The Limits of a Pure Transitional Justice Approach

Nevertheless, some scholars have highlighted the limits of a “pure” transitional justice approach. Gallen (2020, p. 36) notes that “Irish ‘transitional justice’ risks claiming the legitimacy of serving survivors’ needs without any meaningful transition in how they are treated by the state, churches, or society.” As painfully demonstrated in the fallout from the Final Report of the Mother and Baby Homes Commission, inadequate responses that fail to engage with the voices and experiences of affected people risk the revictimization of these persons by the state. In addition to the fear of a transitional justice “fig leaf” to discharge state obligations, one further potential shortcoming of the transitional justice approach is its anchoring in law. Agozino (2021), arguing for *reparative* justice in the case of slavery, warns of the futility of legal cases to realize success for historical collective harms. Agozino argues for an alternative paradigm which does not rest on the law’s reliance on individual culpability, but looks beyond this to wider harms perpetrated by states and corporations. The inadequacies of the law are not the only obstacle to a transitional justice approach. When analyzing public inquiries into peacetime child abuse in Australia and Ireland, Gleeson and Ring (2020) suggested that child abuse presents special challenges to transitional justice’s “linear notion of time as progress.” They point to “the endurance of offending (child abuse remains current and common) and, often, the lack of significant regime change despite the restructuring of institutions and other techniques of governmentality (power still does not reside with children)” (Gleeson & Ring, 2020, p. 133). Transitional justice has also been subject to criticism for not providing an adequate frame for understanding the gendered aspects of past harms. In recent years, there has been greater critique of the absence of both women and a gendered lens from the writing and practice of transitional justice (Bell & O’Rourke, 2007; Zavala Guillen, 2013). Responding to this omission, scholars, and particularly feminist legal scholars, have sought to highlight both the perpetration of gender-based harms such as sexual violence, as well as the necessity of including women in transitional justice processes (Bell & O’Rourke, 2007).

Acknowledging these shortcomings, we would go further and argue that transitional justice has little to say about the state’s wrongdoing at the time the abuses occurred—the state’s funding and regulation of the institutions, its delegation of key public functions to religious organizations, its creation and perpetuation of a situation in which Magdalene Laundries and Mother and Baby Homes became the primary state response to unmarried mothers, the role of the courts in sending women and girls to Magdalene Laundries and the role of the gardaí in arresting and returning escapees to

the institution. Taking a broader perspective, transitional justice also lacks the tools to subject the phenomenon to a more thorough-going sociological analysis which delves into questions of why and how historical gendered institutional violence was perpetrated by individuals, and the role of organizations and the state in this violence. McEvoy (2007) has suggested that the time is now ripe to “thicken” our concept of transitional justice. He argues for the grafting of criminological insights onto existing understandings of transitional justice. This fusion can bring the needed “thicker” understanding of transitional justice, one which transcends narrow legalism. Feminist socio-legal scholars have sought to do this, arguing that there is a need for a plurality of testimonies on historical violence (Enright & Ring, 2020; Fischer, 2016; O’Mahoney & Culleton, 2016). However, more is needed, not only in respect of state responses in the present, but in understanding the role of the state and state wrongdoing at the time of the abuse. Following McEvoy (2007) we propose a role for criminology in conceptualizing the nature of the Irish state’s wrongdoing in respect of the mass confinement of women in institutions. For example, the connections between the Catholic gender order and the state’s goal of reinforcing its own sovereignty might productively be explored. Building on existing work by historians and others (Crowley & Kitchin, 2008; Fischer, 2016; Smith, 2007), there is a role for criminology in naming and exploring the ways in which women were targeted for incarceration in institutions, and how that incarceration was supported by police and other state agents including the judiciary. Criminology also has an important role to play in exposing and conceptualizing these harms as consequences of broader state structures. This might involve further examination of the relationships of power between the state and the church, going beyond the official narrative of deference to the Catholic Church to explore ideas of complicity and collaboration in wrongdoing in the past. It could also provide the tools to explore the state’s relationship with religious orders in the present, as indicated by its indemnification of religious orders against legal claims (Ring et al., 2022) and the state’s refusal (in contravention of domestic and EU law) to require religious orders and dioceses to give survivors of institutional abuse access to their personal records.

Criminology Calling

As McEvoy (2007) called for the injection of a little more criminology into transitional justice so this paper argues for greater criminological study of Ireland’s historical gendered institutional violence. Making his case, McEvoy stated, most obviously, that as transitional justice dealt with the crimes of past regimes, so the discipline that takes crime as its organizing concept would seem a natural lens of analysis. Historical institutional abuse, similarly, presents many practices, processes and experiences that are common to the criminologist, namely, mass confinement and the language of crime and punishment. Why then has criminology not engaged with this topic? There is, of course, some criminological treatment of Ireland’s institutional abuses. Notably the concept of “coercive confinement” proposed by O’Sullivan and O’Donnell (2007; see also O’Donnell & O’Sullivan, 2020; O’Sullivan & O’Donnell, 2012). This approach proposes an explanatory framework through which to comprehend Ireland’s

institutional past which draws on the state, the church, and the family. As O'Sullivan and O'Donnell (2007) noted, Ireland's network of institutions can be understood within Foucault's (1977) concept of the carceral archipelago, and so therefore sits squarely within a foundational work of the discipline. Other criminologists have also engaged with Ireland's mass confinement of women through the 20th century. Black (2022a) has employed concepts of paternalism and postcoloniality to explore the use of religious institutions as places of punishment, while Brangan (2021) looks at Ireland's recent past as one of the mass decarceration of women and girls.

But more is needed—particularly the contribution of criminology to understanding the role of the state in the perpetration and facilitation of crimes and broader social harms in the past and the ongoing manifestation of these harms in the present. The Irish case of institutional gendered abuse can not only contribute to Irish criminology, but can bring something novel to the discipline more broadly in how we conceive of gendered harms, institutional abuse, and the crimes of the powerful. It is important to ask ourselves why historical gendered harms have been neglected within criminology. And what does this say about the preoccupations of the discipline? One response to these questions may lie with the gendered nature of the harms. Although criminology has awoken from its “androcentric slumber” (Daly & Chesney-Lind, 1988, p. 507), it remains prone to frequent napping. The consideration of gender within criminological research and scholarship is a problem with a significant history. Morrison (2015), for instance, lists criminology's trademarks as: liberalism, northern theorizing, nature blindness, and gender blindness.

On this noted “gender blindness,” for instance, Heidensohn (2012, p. 123) has traced the emergence and expansion of feminist criminology from the 1960s, observing that from very humble origins, “The study of gender and crime has become one of the strongest and most enduring areas of criminological endeavour.” This growth has had significant real-world impacts in, for example, greater recognition of gendered violence prompting action from governments. In recent decades in Ireland, the state has substantially reformed its legislative response to sexual violence (Leahy & Fitzgerald O'Reilly, 2018). A suite of legislative changes has, *inter alia*, created a new offense of coercive control and provided a non-exhaustive definition of consent for the first time. These legal developments have reflected societal shifts and public appetite for more robust protections and safeguards in the criminal law. Public opinion on such issues has been galvanized by high-profile cases which garnered huge attention and shone a light on the inadequacies of the criminal justice system in responding to sexual violence and gendered harm. Inevitably, and reflecting the law's limits, these legal changes individualize a societal problem. Scholarship on gendered harms often struggles to reconcile the structures within which harms are perpetrated. What remains more often unexplored is, in the words of Ballinger (2009, p. 31), “the structural context of the heteropatriarchal social order which feminists have identified as being responsible for gendered violence in the first place.”

Despite the successes of the feminist criminological endeavor in addressing gendered harms, there is also “comparative silence” on many issues (Heidensohn, 2012, p. 127). Exploring the Irish example of gendered institutional abuse presents an opportunity to contribute to those criminological questions which have been understudied.

Crucially, the Irish case presents gendered violence as a collectivist harm perpetrated by the state. Drawing on Walklate's (2018) argument that criminology is unable to see the interconnections between peace-time violence, war-time violence, and postconflict violence, and to integrate this with the violence of the state, we can see that the contemporary concerns of the discipline close off other ways of seeing. Just as Kelly (1988) proposed a continuum of sexual violence, so we suggest a multidimensional understanding of gendered violence with the state at one pole and the individual actor at the other.

Critical Criminology and Responding to State-Perpetrated Harm

Critical criminology can provide the framework under which such inquiry is commenced. Although critical criminology is a loose label, Ugwudike (2015, p. 12) suggests that it encompasses "theoretical traditions that trace the origins of crime, deviance and several social problems, such as gender and racial inequality, to an unequal social order." While, traditional criminological studies considered how to respond to the crimes of the poor, critical perspectives turn our attention to the crimes of the powerful. As Cook (2016, p. 340) writes, however, for its first decades "the social realities of gender remained largely invisible to the visionaries in critical criminology." We argue that state crime, one strand of critical criminology, can be instructive in thinking about the Irish case. However, to date, as Collins (2021, p. 371) observes, scholarship on state crime has been remarkably silent on gender, despite the fact that "the state is over-represented as a perpetrator of violence against women." Collins has made a powerful argument for a critical criminology of state crime that adopts an analysis of gendered harms, and which can see the impacts on women and girls, calling for a focus on "state-perpetrated gender-based violence." Relevant here also is Kauzlarich et al.'s (2001, p. 175) argument for a victimology of state crime, defined broadly as "illegal, socially injurious, or unjust acts which are committed for the benefit of a state or its agencies," suggesting a more expansive approach to social harm (Canning & Tombs, 2021). Under a broad definition of harm, one not rigidly tied to legal parameters, the criminological sub-field of zemiology may also be instructive. Zemiology proposes that the label of "crime" be discarded "because it does not sufficiently accommodate the harmful activities of the powerful in society" (Ugwudike, 2015, p. 11). Such an understanding of harm, and of wrongdoing, moves the analysis beyond law to the sociological. Within the "victimology of state crime" research agenda, Stanley (2014) has written on the victimization of children in New Zealand's state-run homes identifying the myriad harms perpetrated which manifest over time and which are not easily categorized by legal classification. Stanley suggests that in its response to institutional abuse, the state focused only on "legally digestible" harms and ignored a more holistic conception of the harms caused by institutionalization. Again, the concept of harm under this approach extends beyond legal wrongs. The circular intertwined relationship of church and state in Ireland in these decades complicates any notion that the state was at a remove from the policies and practices of the Catholic Church (Inglis, 1998). Seeking to understand how repressive gender norms were shaped by a fervent

patriotism funneled into a postcolonial infrastructure run by Catholic religious orders is important for any student of power and wrongdoing.

Under Collins's (2021) categorization, states can be culpable for both direct and indirect violence. The institutional confinement and abuse of women and girls in Ireland exists in a contested zone of "culpability" with regard to the state. The McAleese Report, for instance, was specifically tasked with the aim of establishing the facts of state involvement with the Magdalene Laundries. This investigation, effectively an internal inquiry conducted by a number of government departments and chaired by Senator Martin McAleese (nominated to the Seanad by Taoiseach Enda Kenny), ultimately did find evidence of direct state involvement, particularly in the use of these institutions as sites of confinement for women through the criminal justice system and in the role of state agents in returning escapees. It also found that state agents subsidized the Laundries by state contracts and sanctioned illegal non-payment of wages. However, since the 2013 Report, the state has refused to investigate wrongdoing. Politicians and civil servants have, somewhat illogically, claimed "that if criminality had occurred in the Irish Magdalenes, then the Irish State would investigate, but they will not investigate for potential illegalities and criminal wrongdoing because there is nothing to investigate" (O'Donnell, 2022, p. 285). Thus, the state continues to protect itself and the religious orders from full accountability.

Collins (2021, p. 372), however, takes an expansive view of the state's role in the perpetration of gendered harm, exploring:

heteronormative gender as a social structural arrangement and a mechanism of social control—specifically as the basis for the social, political, economic and cultural inequities that are afforded women, reinforced and replicated by the state. . . . [including] violence that results from power structures that are created, regulated and financed by the state.

Under such a definition, the 20th-century Irish state becomes a perpetrator of violence against women and girls. Drawing on the state's explicit role in the institutionalization of women and girls, and the closely aligned structures of church and state in this period, we suggest that the Irish state was a perpetrator of direct harm. Critical criminological approaches therefore have the benefit that they encompass the perpetration of harms beyond those defined by law, expanding from legal harms to social harms.

Questions for Criminology

Taking a critical criminological perspective, and employing the lenses of state crime and zemiology, a series of research questions emerge. Ireland's recent history of gendered institutional violence and the continuing attempts to grapple with its complex legacy demands a reckoning with a number of entrenched binaries in criminology: the division between the past/the present and between the individual perpetrator/the state as perpetrator as well as the perceived separateness of violence in the street, in the home, and by the state. In its responses to gendered institutional violence, the state has

sought to create a distinction between a brutal and distant past and an enlightened, progressive present. In successive state apologies, the government has repeatedly located the harms suffered by victims—and responsibility for these harms—in the past (e.g., Martin, 2021; theJournal.ie, 2013). A trope running through these apologies is the blurring of questions of state culpability in respect of past abuses. The state's role in funding, regulating and diverting people to institutions is lost in the collective “we” of an imagined past society that was indifferent to the welfare of its most vulnerable. The state's legal duties to license, inspect, and regulate institutions are not mentioned. Although there is a commitment to learn the lessons of the past, governments position themselves as having to deal with a legacy *from* the past (Smith, 2020), rather than the state's moral and legal culpability in the past and in the present. Here, we suggest, is where criminology can make a difference. It can provide useful analytical frames for understanding the power structures at play in the perpetration of gendered institutional abuse. Criminology, along with transitional justice, can seek to hold the state to account when it says it is performing justice through its established architecture of apology, inquiry, redress. In particular, criminology can also help expose how the complicity of present-day governments may inform the “truth recovery” and accountability that can be performed. It can unpack the harms inflicted in the present on survivors and their families by state responses that purport to deliver justice. Taking a longer timeframe analysis, criminological enquiry can untangle the continuities between gendered violence in the past, and symbolic gendered violence in the present through practices such as the minimization of survivors' testimony. Blurring the past and the present requires a criminology of memorialization, asking questions about how violence is remembered (if at all) and *why* the state has been so poor at this, and what kinds of harms are being perpetrated by the failure to commemorate the suffering of the victims of historical gendered institutional abuse.

Analyzing state-perpetrated gendered harms in the past and in the present could involve asking what Walklate (2007, p. 626) termed “very conventional criminological questions,” such as “whose violence counts and under what conditions, how is that violence counted, what renders such violence visible and/or invisible within the discipline, and finally, having made it count, what conceptual tools does criminology have to make sense of violence?.” For an illustration of how gendered violence can be conceptualized within this harm-based structure, we can look to the emerging literature on obstetric violence to demonstrate how state crime perspectives can be meaningfully joined with the literature on gendered violence, in this case perpetrated against women and pregnant persons in childbirth (McKenzie, 2021; United Nations, 2019). Ireland's institutional abuse of women and girls was intimately connected to questions of reproduction and sexuality, such as in the policy of confinement for unmarried mothers and the accounts of inhumane birth practices. One further nuance, which should be explored further, is the extent to which much of the abuse, including obstetric violence, was perpetrated by women, by female medical professionals and religious sisters. As Agozino (2021, pp. 622–623) writes, “there are always members of the oppressed group who exercise the little choice they have or lack of choice to end up being the instruments for the oppression of people like them.” This fact presents a

further lens in analysis of the shapes of structural and gendered violence. Accounts of women's strategies of resistance, and the techniques deployed by the nuns to deal with transgression also need to be engaged with. The Irish case can therefore provide a framework for tackling international comparators, creating a more expansive sociological lens of analysis which sees a spectrum of state-perpetrated gendered harms in the past and in the present.

Criminological inquiry may involve taking the concept of institutional abuse and broadening it out to include abusive state responses in the present. There are worrying continuations between the system of surveillance, punishment and incarceration and current care practices for older people, people with disabilities, homeless people and those seeking asylum. People are still being institutionalized in a system funded by the state and run by private commercial enterprises (O'Donnell & O'Sullivan, 2020). It may involve seeing the relevance of the past to contemporary penalty; as Bosworth (2000) showed, understanding that female prisoners were once a common part of penal institutions can disrupt contemporary approaches to imprisonment by governments (and criminologists), that view women prisoners as an afterthought.

It may involve borrowing insights from trauma studies (Fassin & Rechtman, 2009; Ring et al., 2022) and linguistics (Hidalgo-Tenorio & Benítez-Castro, 2021) to consider the intergenerational effects of past wrongs, and including families in the category of victim. It may involve amplifying the voices of survivors who do dare to speak publicly about their experiences. Criminology can offer fresh insights into the intersecting embodied vulnerabilities of these survivors, in terms of their age, their race, their perceived stigmatized status as former inmates of institutions, or their lack of access to education. It could involve exploring the enduring role of shame and stigma in reproducing hierarchies of victimhood in state responses. Importantly, it involves foregrounding victims' voices in trying to understand the nature of the injuries and in understanding the wrongs perpetrated by the state in the present. This work is already being undertaken by survivors, by their activist allies, and by academics (O'Mahoney & Culleton, 2016; the Waterford Memories Project, 2022; the Magdalene Oral History Project, 2022). Criminology can therefore be central to how we (as criminologists and as a society) understand historical abuses and their occurrence in the past and in how we seek to address their ongoing effects on survivors and their families in the present.

As we explored in the introduction, the Irish experience is not unique. Instead, our use of the Irish case advances an agenda in which we bring a criminologically expansive consideration of harm, pushing beyond harm as legally defined. Crucially, we propose ways of conceptualizing gendered harms which encompass the state as a key perpetrator. The relevance of the Irish example arises, in part, from the fact that such practices were *not* unique to Ireland. It suggests a number of avenues for future study. The prevalence of historic gendered institutional harms globally, increasingly coming to visibility through a series of hard-won official inquiries, provides a potentially rich canvas for a truly comparative penological project which moves the focus of this field beyond the prison. This project can bring in critical questions about, for instance, the relationship between the state and private actors such as religious organizations or

commercial enterprises (Black, 2022b), the control and criminalization of reproduction and childbirth (Brightman et al., 2015), and the oppressions experienced by marginalized groups in society, including Indigenous women and girls (Stubbs, 2011). Such an endeavor can piece together the diverse sites of harm against women and girls into a broader criminology of state-perpetrated gendered violence.

Conclusion

This article has proposed a greater role for criminology in understanding Ireland's history of gendered institutional violence. This history certainly *should* be of interest to criminology, involving as it does the mass incarceration of marginalized populations, the dominance of the terminology of crime and punishment, and the close links with the criminal justice system. A criminological perspective can expand the field of vision to take in not only legal harms but also social harms. A critical criminological frame can also help us better understand and evaluate state responses in the present, including considering the continuing legacy of this gendered and classed harm as it extends into the here and now. The Irish case of historical gendered institutional violence is an important case study for criminologists interested in questions of gender and state crime. Importantly, the Irish case shows how the state can entrench and magnify existing harms, and create new ones, through legal responses that preserve state and religious power. A critical criminological lens can provide a meaningful framework by which to engage in further enquiry. This is urgently needed if we are ever to do justice to survivors' demands for recognition and redress, and to their calls for guarantees that future generations will be better treated. Crucially, such a framework can speak to diverse examples internationally in a larger criminological project which seeks to foreground state-perpetrated gendered harms.

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Notes

1. In 1991, the laundry operated by the Sisters of Our Lady of Charity of Refuge in Dublin closed. The Sisters had run High Park Magdalene Laundry there for over a century. Following an application to exhume a former graveyard on the site to facilitate a land sale, it became clear that not only did the organization not have all the necessary death certificates they had also underestimated how many bodies had been buried on the land. Justice for Magdalenes Research has stated that this raises serious concerns about the failure to record the deaths of women confined in the institution, and point out that the burial place of 213 women from High Park remains unknown (Justice for Magdalenes Research,

- “Preserving Magdalene History,” n.d.).
2. There is a potential role for private legal actions against state departments and religious orders (see Ring et al., 2022), but changes to established legal doctrine are required.
 3. *Philomena Lee and Mary Harney v The Minister for Children, Equality, Disability, Integration and Youth* was heard by the High Court (Simons J) in November 2021. The case was settled.

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