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IRISH WOMEN AND MEN IN VICTORIA'S PRISONS, 1850s-1880s<sup>1</sup>

Elizabeth Malcolm

ABSTRACT: Claims that the Catholic Irish-born community in colonial Australia was characterised by high rates of criminal offending were accepted by many contemporaries and have been widely repeated by historians since. Poverty, drunkenness, alienation and prejudice have all been put forward as explanations for lawbreaking. This article, through an analysis of samples of Irish prisoners in late nineteenth-century Victoria, challenges assessments of the levels and nature of Irish crime and the reasons offered for them. It shows that a large proportion of offenders were middle-aged women, not young men as is frequently assumed, and that most were convicted of non-violent, victimless public order offences that even at the time were acknowledged to be hardly crimes in any meaningful sense.

*Crime and the Irish in Australian Historiography*

The first substantial groups of Irish women and men to reach the Australian colonies were, as is well known, convicts: an estimated 48,000 arrived between 1791 and 1868.<sup>2</sup> Beginning in the 1830s, however, free Irish settlers came increasingly to outnumber convicts and, by 1901, around 350,000 had immigrated to Australia.<sup>3</sup> Yet, free immigrants were from broadly similar socio-economic backgrounds to convicts: most had been born in rural Ireland and, on arrival, they were unmarried, unskilled and aged 15-30 years, with a large proportion being women.<sup>4</sup> Contemporaries and later historians have pointed to another alleged similarity between the two groups: numerous immigrants, like convicts, suffered imprisonment in colonial Australia for serious criminal offences.

In 1986, Patrick O'Farrell wrote that the Catholic Irish had among them 'more than their fair share of the drunken, the ignorant and the criminal'—and he was referring to immigrants, not convicts. Citing the apparently large numbers of Irish imprisoned or executed in both New South Wales (NSW) and Victoria during the 1860s and 1870s, he remarked: 'Small wonder the Irish reputation for violence and crime'. To account for this situation, O'Farrell adopted in essence a class analysis, arguing that the Irish 'occupied that lower stratum of society most open to pressures towards crime and most likely to be arrested by the police'.<sup>5</sup> Other historians largely agreed. Neil Coughlan, when highlighting the 'generally high crime rate' among the Irish in Victoria, also emphasised class, but he thought cultural and political differences important as well. For him, Irish offending reflected a 'group alienated from the colony's social structure ... and perhaps from its British system of law'.<sup>6</sup>

The Canadian historian, D.H. Akenson, in considering the Irish diaspora more broadly, quoted NSW statistics similar to those used by O'Farrell. He suggested that being 'locked up relatively often' was the fate of many immigrants, regardless of their ethnic origins. But this was more

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<sup>2</sup> Different figures for Irish convict numbers appear in different sources; the figure given here is from Patrick O'Farrell, *The Irish in Australia*, Sydney: UNSW Press, 1986, p. 23.

<sup>3</sup> David Fitzpatrick, *Oceans of Consolation: Personal Accounts of Irish Migration to Australia*, Cork: Cork University Press, 1994, pp. 6-8.

<sup>4</sup> Deborah Oxley and Eric Richards, 'Convict Women and Assisted Female Immigrants Compared, 1841—A Turning Point?', in Eric Richards, ed., *Visible Women: Female Immigrants in Colonial Australia*, Canberra Australian National University, 1995, pp. 43-56

<sup>5</sup> O'Farrell, *The Irish in Australia*, pp. 168-9.

<sup>6</sup> Neil Coughlan, 'The Coming of the Irish to Victoria', *Historical Studies*, vol. 12, no. 45, 1965, p. 85.

likely in the case of groups like the Catholic Irish because they contained large numbers of young, single men given to ‘crimes of exuberance’, like drinking and brawling. Akenson also claimed that British colonial justice systems were ‘loaded against the Irish immigrants’. This explained why they were frequently convicted of offences, whereas ‘established residents’ who committed similar crimes often went unpunished.<sup>7</sup> However, Trevor McClaughlin challenged Akenson’s stress on young males when he calculated that a disproportionate number of Irish immigrants convicted of crimes in eastern Australia were female. According to him, these ‘vulnerable’ women were ‘casualties of colonisation’ because ‘alcohol abuse’ was characteristic of their offending. Women dismissed from their jobs as domestic servants or deserted by their husbands often found in alcohol a ‘welcome escape from a miserable existence’ or the ‘courage to rail against the world’. In McClaughlin’s view, Irish female immigrants, because they were mostly young and single, lacking family support networks in the colonies, and because they had grown up in the heavy-drinking culture of Ireland, were ‘at greater risk than other female immigrants’ of being imprisoned for crime, in particular public drunkenness.<sup>8</sup>

The emphasis placed by some historians on Irish immigrants as criminals would not have surprised nineteenth-century contemporaries.<sup>9</sup> In colonial Australia, many settlers of British birth or descent were in little doubt that lawbreaking was an Irish characteristic. Indeed, some were convinced that lawlessness helped define the Irish as a race. A.M. Topp, an English-born leader writer for the conservative Melbourne *Argus*, claimed in 1881 that a ‘large proportion of our criminal class is contributed by the Catholic Irish’. Their ‘tendency to acts of violence’ was ‘an obvious characteristic’, Topp asserted, of ‘an imperfectly civilized race’ that had ‘never been taught to respect the law, but only to yield to brute force’.<sup>10</sup> Even leading members of the Irish community itself conceded that crime was a problem. J.F. Hogan, in his otherwise celebratory 1887 book, *The Irish in Australia*, admitted that, what he called, the ‘superabundant sociable qualities’ of Irish men had tempted some of them into heavy drinking, which inevitably led to poverty, violence and crime.<sup>11</sup>

All these explanations, whether offered in the nineteenth or the twentieth century, need to be approached sceptically. This is because, when taken together, they are far from consistent. If heavy drinking among young men does not fully explain high Irish arrest rates, as Akenson suggested it might, then how valid is his other explanation pointing to a biased justice system that included the police? O’Farrell too had highlighted the police as playing a key role in the large numbers of Irish arrests. Yet, Mark Finnane, after researching the justice system in colonial Queensland, concluded that ethnic prejudice was of ‘limited significance’ because ‘the

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<sup>7</sup> D.H. Akenson, *The Irish Diaspora: A Primer*, Toronto and Belfast: P.D. Meaney Company and Queen’s University, Belfast, 1993, p. 118-19.

<sup>8</sup> Trevor McClaughlin, ‘Vulnerable Irish Women in Mid-to-Late Nineteenth-Century Australia’, in Richard Davis et al., eds, *Irish-Australian Studies: Papers Delivered at the Eighth Irish-Australian Conference, Hobart, July 1995*, Sydney: Crossing Press, 1996, pp. 157-65; Trevor McClaughlin, ‘“I was nowhere else”: Casualties of Colonisation in Eastern Australia during the Second Half of the Nineteenth Century’, in Trevor McClaughlin, ed., *Irish Women in Colonial Australia*, Sydney: Allen and Unwin, 1998, pp. 142-62.

<sup>9</sup> Australian historians of crime have also highlighted Irish offending. See, for example, P.N. Grabosky, *Sydney in Ferment: Crime, Dissent and Official Reaction, 1788 to 1973*, Canberra: Australian National University Press, 1977, pp. 86-7.

<sup>10</sup> A.M. Topp, ‘A Few More Words on the Irish Question’, *Melbourne Review*, vol. 6, 1881, p. 210; Dianne Hall and Elizabeth Malcolm, ‘“English Institutions and the Irish Race”: Race and Politics in Late Nineteenth-Century Australia’, *Australian Journal of Politics and History*, vol. 62, no. 1, 2016, pp. 1-15.

<sup>11</sup> J.F. Hogan, *The Irish in Australia*, London: Ward and Downey, 1887, pp. 149-52.

Irish were not treated differently at the charge, conviction or sentencing stage'.<sup>12</sup> And there is also the fact, not mentioned by either O'Farrell or Akenson, that in most Australian colonies, many police constables were themselves Irish immigrants. In addition, while McClaughlin was certainly right to draw attention to apparently high rates of imprisonment among Irish women, how accurate was his portrait of them as 'victims', driven through no fault of their own to alcoholism? Was drunkenness the main reason for their frequent arrests on public order charges such as vagrancy? By contrast, Sharon Morgan, in an important study of 1850s' Victoria, claimed that Irish women were 'heavily involved' in prostitution.<sup>13</sup>

This article seeks to throw additional light on the contentious topic of crime and the Irish diaspora by analysing random samples totalling 142 Irish-born women and 203 Irish-born men who were imprisoned in Victorian gaols at various times between the mid 1850s and the late 1880s. As well as establishing who these people were and the nature of their crimes, the article will investigate differences between female and male Irish prisoners and between Irish prisoners, on the one hand, and those born in England and Australia, on the other. It will also consider the policing of public order crime, the attitudes of inspectors-general of prisons to offenders and attempts by Irish clergy and laity to provide alternatives to imprisonment.

#### *Differences between Irish Female and Male Prisoners*

The information presented in Tables 1 and 2 in the Appendix demonstrates that Irish female and male prisoners were different in a number of significant ways. Gender therefore has an essential role to play in any analysis of the Irish and crime. What is perhaps most striking in these tables is the fact that Irish women formed a substantially larger proportion of the female Victorian prison population than did Irish men of the male population. Irish women ranged from around a half of all female prisoners during the 1850s and 1860s down to about a quarter by the late 1880s. By contrast, Irish men hovered around 15-17 per cent of male prisoners throughout the period, increasing to a quarter only during the late 1860s.

Even at the time, those in charge of Victoria's penal institutions were well aware that, contrary to popular belief, their male prisoners were not predominantly Irish men. Before a select committee investigating prison discipline, the inspector-general of penal establishments, John Price, was asked in January 1857—just two months before he was murdered by prisoners—the 'average number of prisoners ... would be principally Irish, would they not?' Far from it, responded Price: 'We have ... all nations here ... Chinese, Prussians, English, Irish, Scotch, Welch [sic], Germans'. In fact, 'Protestants are two-thirds' of male prisoners in Victoria, he told the committee.<sup>14</sup>

#### *Irish Assisted Immigrants and Former Convicts in Victoria*

In order to understand why a large proportion of women in Victoria's prisons were Irish, we need firstly to realise that, between about 1840 and 1890, there were substantial numbers of Irish-born women living in the colony. Government-funded migration schemes had brought many young unmarried women and girls from Ireland to eastern Australia beginning in the

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<sup>12</sup> Mark Finnane, 'The Irish and Crime in the Late Nineteenth Century: A Statistical Inquiry', in Oliver MacDonagh and W.F. Mandle, eds, *Irish-Australian Studies: Papers Delivered at the Fifth Irish-Australian Conference*, Canberra: Australian National University, 1989, p. 97.

<sup>13</sup> Sharon Morgan, 'Irishwomen in Port Phillip and Victoria, 1840-60', in MacDonagh and Mandle, eds, *Irish-Australian Studies*, p. 243.

<sup>14</sup> *Report from the Select Committee upon Penal Discipline*, Melbourne: John Ferres, 1857, p. 42.

early 1830s, and assisted Irish female immigration to Victoria continued at significant levels through the gold-rush decade of the 1850s and into the 1860s.<sup>15</sup> As Table 3 in the Appendix shows, in 1846 there were around 4,000 Irish women in the Port Phillip District of NSW, which in 1851 became the colony of Victoria. Comprising 32 per cent of all settler women, they were the largest female ethnic group. Within ten years, a further 25,000 Irish women had arrived, followed by an additional 10,000 by 1861 and another 10,000 by 1871. In the latter year, there were a little over 50,000 such women and they formed the majority of Victoria's Irish population. Having a female majority made the Irish unique as all other immigrant groups had male majorities—often large male majorities.<sup>16</sup> However, the abolition of government immigration subsidies in the early 1870s precipitated a drastic fall in Irish arrivals and contributed to a halving in the numbers of both female and male Irish-born Victorians over the following two decades. The growing female majority evident after 1870 probably reflects, in part at least, the fact that women tended to live longer than men.<sup>17</sup>

In addition to an upsurge in Irish female assisted immigration from the early 1830s, there was also a marked increase in the transportation of Irish female convicts: indeed, approximately two-thirds of all women transported from Ireland left after 1830. NSW during the 1830s and then Van Diemen's Land (VDL) between 1840 and 1853 received in total around 24,200 Irish convicts, 6,700, or 28 per cent of them, being women.<sup>18</sup> During the Famine era (1846-53), nearly 6,000 convicts from Ireland arrived in VDL, of whom an even larger proportion were women—around 40 per cent—with the majority serving seven-year sentences for non-violent property crimes.<sup>19</sup>

When they gained their freedom, large numbers of these Vandemonians headed north across Bass Strait to the mainland. But they found no welcome awaiting them in Victoria, as they were widely blamed for a significant increase in crime in the wake of the discovery of gold.<sup>20</sup> In 1852, a Convicts Prevention Act was passed intended to exclude from Victoria convicts who had been released for good behaviour before the completion of their sentences. But, just two years later, a select committee acknowledged that the act, which the British government refused to ratify, had proved 'ineffectual'.<sup>21</sup> Price's successor as penal inspector-general, William Champ, estimated in June 1857 that at least 43 per cent of the 1,200 male prisoners in his

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<sup>15</sup> Robin Haines, "The priest made a bother about it": The Travails of "that unhappy sisterhood" Bound for Colonial Australia', in McClaughlin, ed., *Irish Women in Colonial Australia*, p. 48.

<sup>16</sup> Wray Vamplew, ed., *Australians: Historical Statistics*, Sydney: Fairfax, Syme and Weldon Associates, 1987, pp. 11-12.

<sup>17</sup> Richard Broome, *The Victorians: Arriving*, Sydney: Fairfax, Syme and Weldon Associates, 1984, pp. 47-51, 94-100, 102-4. In Victoria, on average, women aged 20 in 1871 could expect to live to 64 or 65, whereas men of 20 could expect to live to 62. Vamplew, ed., *Australians: Historical Statistics*, p. 60.

<sup>18</sup> Charles Bateson, *The Convict Ships, 1787-1868*, 2<sup>nd</sup> ed., Glasgow: Brown, Son and Ferguson, 1969, pp. 350-57, 373, 387-91, 395; John Williams, *Ordered to the Island: Irish Convicts and Van Diemen's Land*, Sydney: Crossing Press, 1994, pp. 14, 168-9, 176-7.

<sup>19</sup> Nicholas Woodward, 'Transportation Convictions during the Great Irish Famine', *Journal of Interdisciplinary History*, vol. 37, no. 1, 2006, pp. 67-72; Bláthnaid Nolan, 'The Experience of Irish Women Transported to Van Diemen's Land (Tasmania) during the Famine', in Ciarán Reilly, ed., *The Famine Irish: Emigration and the Great Hunger*, Dublin: The History Press Ireland, 2016, pp. 55-66; Janet McCalman and Rebecca Kippen, "'Involuntary but ever so visible": Transported to Van Diemen's Land, 1812-49', in Margrette Kleinig and Eric Richards, eds, *On the Wing: Mobility Before and After Emigration to Australia*, Sydney: Anchor Books Australia, 2013, pp. 12-27.

<sup>20</sup> Ross McMullin, 'The Impact of Gold on Lawlessness and Crime in Victoria, 1851-4', *Victorian Historical Journal*, vol. 48, no. 188, 1977, pp. 125-6, 130-31.

<sup>21</sup> *Report from the Select Committee of the Legislative Council on the Influx of Criminals Prevention Bill*, Melbourne: John Ferres, 1854, n.p.; H.G. Turner, *A History of the Colony of Victoria, 1797-1854*, 1904, vol. 1, Melbourne: Heritage Publications, 1973, pp. 344-50.

charge were ex-convicts, most of them having come from VDL.<sup>22</sup> Champ's estimate is in line with the percentages in our Irish prisoner samples in Tables 1 and 2, which suggest that, during the mid 1850s, 45 per cent of Irish female and 49 per cent of Irish male prisoners were ex-convicts.

### *Irish Women and the Police in Melbourne*

Many Irish women settled in Melbourne, working mainly as servants in homes, hotels or institutions before most eventually married.<sup>23</sup> Young, single, female immigrants arriving on government assisted passages were initially housed in Melbourne's immigration depot from where they were hired out to local employers.<sup>24</sup> But, although there was a high demand for servants in the rapidly growing colony, Irish women in search of work could encounter significant obstacles. Employers of Protestant British birth or descent often did not want Catholic Irish girls living and working in their homes, opting instead for Protestant English or Scottish servants.<sup>25</sup> Hostility to the arrival of large numbers of Catholic Irish women was very evident in articles in the Melbourne press during the 1840s and early 1850s and also in the many 'No Irish Need Apply' and 'English' or 'Scottish Preferred' advertisements for servants appearing in these same newspapers.<sup>26</sup>

If assisted Irish female immigrants encountered ethnic and religious prejudice in their search for work, how much more difficult it must have been for ex-convict Irish women. Some used aliases or lied about their past—as did male ex-convicts too—but the extent to which such tactics succeeded is impossible to gauge. That a majority of these ex-convict women were illiterate in English would not have helped their employment prospects; nor would the fact that many carried visible scars or tattoos on their bodies. Hiding a convict past was made even more difficult because, under the Convicts Prevention Act, police detectives were assigned to monitor suspected ex-convicts. Ordinary citizens too often engaged in what has been termed the 'popular pastime' of 'Vandemonian spotting'.<sup>27</sup> Thus, while being Irish and Catholic could make it hard at times to get a job, being a former convict was a substantial additional handicap.<sup>28</sup> And studies have shown that difficulty in finding reliable paid employment was a major risk factor in terms of criminal offending.<sup>29</sup>

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<sup>22</sup> *Penal Department. Report of the Inspector-General*, Melbourne: John Ferres, 1857, p. 7; *Report from the Select Committee upon Penal Discipline*, 1857, p. 20.

<sup>23</sup> Coughlan, 'The Coming of the Irish to Victoria', p. 85; Malcolm Campbell, 'Irish Women in Nineteenth-Century Australia: A More Hidden Ireland', in Philip Bull et al., eds, *Irish-Australian Studies: Papers Delivered at the Sixth Irish-Australian Conference, July 1990*, Melbourne: La Trobe University, 1991, pp. 25-38.

<sup>24</sup> Chris McConville, 'Emigrant Irish and Suburban Catholics: Faith and Nation in Melbourne and Sydney, 1851-1933', PhD thesis, University of Melbourne, 1984, pp. 97-100.

<sup>25</sup> Richard Twopeny, *Town Life in Australia*, 1883, Melbourne: Penguin Books, 1973, p. 51.

<sup>26</sup> *Argus* (Melbourne), 24 January 1850, p. 2, 15 March 1850, p. 2, 17 April 1850, p. 2; Elizabeth Malcolm and Dianne Hall, *A New History of the Irish in Australia*, Sydney: NewSouth Publishing, 2018, pp. 172-7.

<sup>27</sup> *Report from the Select Committee upon Penal Discipline*, 1857, pp. 4, 21; McCalman and Kippen, "'Involuntary but ever so visible'", p. 17.

<sup>28</sup> Irish female ex-convicts remaining in Tasmania also struggled to find work and some were repeatedly incarcerated for petty offences. See John Williams, 'Irish Female Convicts and Tasmania', *Labour History*, no. 44, 1983, pp. 1-17.

<sup>29</sup> During the period 1870-1950, Victoria's prison population peaked in 1891 and 1932, both years of economic depression and high unemployment. See Arie Freiberg and Stuart Ross, *Sentencing Reform and Penal Change: The Victorian Experience*, Sydney: Federation Press, 1999, pp. 35-6.

The distribution of Irish women in Victoria was somewhat different from that of Irish men, at least during the mid-century decades.<sup>30</sup> Men were more dispersed and more rural in their occupations, with many working during the 1840s as shepherds on squatters' runs or, after 1851, as miners on the goldfields or, from the 1860s, as small farmers on selections. Women were more likely to settle in urban areas, especially Melbourne, often living in working-class parts of the city centre and inner northern suburbs. This gender difference in settlement patterns meant that Irish women were more exposed to urban poverty and petty crime.<sup>31</sup> Also, by living in heavily-policed Melbourne, they increased their chances of arrest since historians of crime have identified a correlation between police numbers and arrest rates.<sup>32</sup> It is notable that, in 1858 for instance, 84 per cent of women serving sentences of penal servitude—nearly half of them Irish—had been convicted in Melbourne courts, compared with only 40 per cent of male prisoners.<sup>33</sup> Later the male Irish and Catholic population of Melbourne increased as former miners, failed selectors and the sons of small farming families left country Victoria to look for work in the growing city.<sup>34</sup> At the same time, as Table 2 shows, their pattern of offending changed, shifting from mainly crimes against property during the 1850s, notably larceny and horse stealing, to crimes against public order during the 1880s, notably 'having no visible means of support' and being 'idle and disorderly' or 'a rogue and a vagabond'.

If an Irish woman or man was arrested in Melbourne, or anywhere else in the colony, between the 1850s and the 1880s, it is highly likely that the police man making the arrest was himself Irish. During these decades, the majority of police men, from constables up to and including several chief commissioners, were Irish immigrants. Beginning at about 65 per cent of the police force when it was re-structured in 1853, the Irish-born proportion had risen to 82 per cent by 1870 and, even as late as 1888, nearly a quarter (23 per cent) of qualified applicants for police jobs were Irish men.<sup>35</sup> On the goldfields during the 1850s, mounted police concentrated on collecting mining licence fees, but in Melbourne large numbers of constables on foot, helped by a plain-clothes detective force, focused on apprehending law-breakers, including ex-convicts and those breaching the colony's 1852 Vagrancy Act. By 1855, Melbourne had been divided into beats, with over a third (36 per cent) of the colony's non-mounted constables patrolling the city's streets in shifts around the clock.<sup>36</sup>

The confrontation on the streets of Melbourne and in regional Victoria between the Irish police man and the Irish law-breaker, especially if that law-breaker was a woman, is an intriguing topic. But, unfortunately, we know little about it from the point of view of those arrested, beyond Ned Kelly's heated 1879 denunciation of Irish men who joined the Victorian police

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<sup>30</sup> Oliver MacDonagh, 'The Irish in Victoria, 1851-91: A Demographic Essay', in T.D. Williams, ed., *Historical Studies VIII*, Dublin: Gill and Macmillan, 1971, pp. 67-92, stresses how widely Irish immigrants dispersed throughout Victoria, but he does not analyse male-female differences in settlement patterns.

<sup>31</sup> For an analysis of Melbourne's female criminal networks, many of whose members would have been Irish, see A.J. Piper, "'I'll have no man": Female Families in Melbourne's Criminal Subcultures, 1860-1920', *Journal of Australian Studies*, vol. 39, no. 4, 2015, pp. 444-60.

<sup>32</sup> Mark Finnane and Stephen Garton, 'The Work of Policing: Social Relations and the Criminal Justice System in Queensland, 1880-1914: Part I', *Labour History*, no. 62, 1992, p. 67; Morgan, 'Irishwomen in Port Phillip and Victoria', p. 241.

<sup>33</sup> *Criminal Statistics. Returns called for from the Sheriff and Inspector General of Penal Establishments by the Honourable the Chief Secretary*, Melbourne: John Ferres, 1858, pp. 3-4, 6-7.

<sup>34</sup> See McConville, 'Emigrant Irish and Suburban Catholics', p. 116 (a), Map 3.27, which shows large numbers of Catholic men living in inner suburban Melbourne during the 1890s who had been born in country Victoria.

<sup>35</sup> Robert Haldane, *The People's Force: A History of Victoria Police*, 3<sup>rd</sup> ed., Melbourne: Melbourne University Press, 2017, pp. 37, 41, 78-9, 443 note 54; *Age* (Melbourne), 21 September 1888, p. 7.

<sup>36</sup> *Police Department Returns*, Melbourne: John Ferres, 1855, pp. 10-15; *Melbourne Police. Report of the Committee Appointed to Enquire into the State of the Police*, Melbourne: John Ferres, 1855, p. 9.

force as ‘armed curs’, cowards, rogues and traitors.<sup>37</sup> However, the fact that during the 1860s, the Irish made up around 40 per cent of all those arrested for assaults on the police suggests that Kelly was far from alone in his hostility to Irish police men.<sup>38</sup>

*Irish, English and Australian Comparisons: Proportions and Numbers*

Tables 5 and 6 in the Appendix, which take the year 1862 as an example, highlight the large proportions of Irish-born women arrested and convicted in Victoria, not only in comparison to Irish men, but also to English women and especially to the Australian-born of both sexes. Yet, according to the 1861 Victorian census, there were far more Australian and English females in the colony than Irish females.<sup>39</sup> The figures would appear to indicate that Irish women—and men also—were over-represented among those arrested and sent to prison in Victoria in 1862. But English men seem to have been over-represented in prison as well in terms of their proportion of the total male population, whereas English women were only slightly under-represented. On the other hand, unlike immigrants, the Australian-born were substantially under-represented as prisoners. This apparent difference between Australians and both the Irish and the English largely reflects the fact, not that immigrants were necessarily more lawless, but that around 40 per cent of the colony’s Australian-born population were children under 15 years of age, who were unlikely to be imprisoned. Immigrant populations, on the other hand, were mostly composed of adults, with far fewer overseas-born children among them.<sup>40</sup> As Mark Finnane warned in an important 1989 article on the Irish and crime in Australia, in the absence of detailed statistics on the age structures of different ethnic populations—and ideally class structures as well—comparisons between rates of ethnic offending based on total population figures can be misleading and unreliable.<sup>41</sup>

There do, however, appear to have been some real differences between the Irish and the English as regards the courts in which they were convicted. The figures in Table 7 in the Appendix indicate that Irish men and women were more likely than the English to be convicted in magistrates’ courts and less likely to be convicted in superior courts. In part, this reflects the fact that Irish crime largely involved petty offences. The Victorian government statistician, H.H. Hayter, noted that in 1879 Irish offences were ‘not ... as a whole ... [of] so serious a nature’ as those for which the English were arrested.<sup>42</sup> Yet, the somewhat higher proportion of Irish convictions at petty sessions also raises the question of whether there was a degree of hostility towards Irish defendants among magistrates. As we have seen, in his study of Queensland courts during 1871-1911, Finnane found no evidence of discrimination against the Irish in patterns of arrest, conviction or sentencing. But, in 1867 for example, whereas Victorian magistrates convicted 77 per cent of Irish women arrested as ‘disorderly prostitutes’, they convicted only 65 per cent of English women arrested for the same offence.<sup>43</sup> Also, press

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<sup>37</sup> Ned Kelly, *The Jerilderie Letter*, ed. Alex McDermott, Melbourne: Text Publishing, 2001, pp. 63-72.

<sup>38</sup> *Criminal Statistics. Returns of the Number of Persons taken into Custody by the Victorian Police Force during the Year 1862*, Melbourne: John Ferres, 1863, pp. 34, 36; *Criminal Statistics. Returns of Persons Taken into Custody by the Victorian Force during the Year 1867*, Melbourne: John Ferres, 1868, pp. 38, 41.

<sup>39</sup> Australian Bureau of Statistics, 3105.0.65.001, Australian Historical Population Statistics, 2014 [hereafter ABS, AHPS], Table 8.2, Population, Sex and Country of Birth, Victoria, Census Years 1854-91, www.abs.gov.au, accessed 30 September 2018.

<sup>40</sup> *Victorian Year Book, 1876-7*, p. 12, shows that 42 per cent of the total population were less than 15 years of age.

<sup>41</sup> Finnane, ‘The Irish and Crime in the Late Nineteenth Century’, pp. 90, 97.

<sup>42</sup> *Victorian Year Book, 1879-80*, pp. 254, 261.

<sup>43</sup> *Criminal Statistics*, 1868, pp. 39, 42.

reports of cases involving Irish defendants before Victorian magistrates' courts sometimes yield examples of anti-Irish sentiments being expressed by those on the bench.<sup>44</sup>

Whereas the extent to which magistrates in Victoria discriminated against the Irish remains uncertain, gender discrimination is very apparent in sentencing. Petty sessions courts were more likely to use fines or good behaviour bail bonds in cases involving men than women. In 1875, for instance, of all men convicted in Victorian magistrates' courts, fully 45 per cent were fined, whereas only 18 per cent of convicted women received a fine. Instead, 36 per cent of women were sentenced to seven days or less in prison—compared to 27 per cent of men—and a further 7 per cent of women were committed to a reformatory, industrial school or some other institution—compared to a mere 2 per cent of men.<sup>45</sup> It is clear from these figures that men were much more likely than women to be able to buy their way out of a prison sentence.

This is very obvious in the case of Bernard Dowd, born in 1838, a Catholic stonecutter, whose body, like those of many Irish prisoners, bore numerous injuries and marks. He had a broken nose, a damaged knee and was 'lame' in one leg. He had arrived in Auckland as a child in 1844, before coming to Melbourne in 1852, and may previously have worked as a seaman for he was heavily tattooed. Between 1876 and 1889, he was convicted on six occasions by various Melbourne courts for offences ranging from 'threatening language' and assault to damaging property and receiving stolen goods. But, although sentenced four times for using 'threatening language', in each instance Dowd was offered bail in lieu of imprisonment and, for damaging property, he was offered a fine.<sup>46</sup> Dowd was married and magistrates generally appear to have been reluctant to send married men to gaol if this would have resulted in their families being left without a breadwinner.<sup>47</sup> Therefore, men who did go to gaol had usually been convicted of relatively serious crimes for which they received significant sentences, whereas women were often imprisoned for only a few days or a week for very minor breaches of the laws regulating public order. As a consequence, in terms of their offences, the general male and female prison populations were markedly different, which is very apparent in our Irish profiles in Tables 1 and 2.

Thus far, we have been focusing primarily on proportions or percentages. They are obviously indicative of important characteristics of the Irish prison population, even if not always a satisfactory basis on which to make comparisons. However, raw numbers also tell an interesting story, especially as regards Irish women and crime. In March 1858, for example, there were some 150 women incarcerated in Victoria's gaols and penal establishments. If, as our 1857 profile of Irish female prisoners in Table 1 indicates, around 43 per cent of these women were Irish, that amounts to 64 Irish women prisoners in total. Yet, according to the 1857 census, there were nearly 29,500 Irish women living in the colony, almost all of them adults.<sup>48</sup> In later decades, the daily average number of all female prisoners hovered around 300.<sup>49</sup> Therefore, by the late 1880s, when 26 per cent of female prisoners were Irish, that amounts to about 75 women out of a total Irish female population of nearly 25,000 in 1891. In other words, the proportions of Irish women among female prisoners may have been large, but

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<sup>44</sup> See, for example, the anti-Irish remarks made by a magistrate in an 1857 case involving a dispute between Irish and Chinese miners. *Bendigo Advertiser*, 2 September 1857, p. 3.

<sup>45</sup> *Victorian Year Book*, 1875, p. 101.

<sup>46</sup> Bernard Dowd, no. 13683, Central Register of Male Prisoners, vol. 23, November 1875-April 1876, nos 13328-13791, Public Record Office Victoria [hereafter PROV], VPRS 515-P0000.

<sup>47</sup> Shurlee Swain, 'Destitute and Dependent: Case Studies of Poverty in Melbourne, 1890-1900', *Historical Studies*, vol. 19, no. 74, 1980, pp. 98, 101.

<sup>48</sup> *Criminal Statistics*, 1858, pp. 3-5; Vampley, ed., *Australians: Historical Statistics*, p. 10.

<sup>49</sup> Freiberg and Ross, *Sentencing Reform and Penal Change*, p. 76.

their numbers, in comparison to the size of total Irish-born female population, were actually quite small. In numerical terms, only a handful of Irish women ended up in Victoria's gaols. And, as our samples reveal, large numbers of them were middle-aged recidivists convicted of public order offences.<sup>50</sup>

### *Types of Offences: Vagrancy, Drunkenness and Prostitution*

In order to better understand the lives of the Irish female prisoners in our samples, we need to look a little more closely at the crimes they were convicted of. Table 1 shows that two-thirds of them, rising to three-quarters by the 1870s and over 90 per cent by the late 1880s, went to prison for public order offences.

Victoria, as well as introducing legislation in 1852 to exclude many former convicts, also passed a Vagrancy Act—the two statutes not being unrelated. The Vagrancy Act was modelled on NSW's 1835 vagrancy law, which was intended to control ex-convicts and was in turn based on the English Vagrancy Act of 1824, a measure passed partly in response to increased Irish immigration. Indeed, some Irish convicts were transported to Australia for vagrancy, although no English convicts were.<sup>51</sup> Laws against vagrancy were enacted throughout Australia, beginning in 1824 in VDL and extending up to 1930 in the Australian Capital Territory. In Victoria in 1864-5, police and town offences legislation widened the provisions relating to vagrancy to create an array of non-violent offences. Many of these were ill-defined, thus allowing the police considerable discretion. Public order and vagrancy crimes ranged from drunkenness or using 'obscene language' to being a 'disorderly character' or a 'rogue and a vagabond' or having 'no visible means of support'. Historians have interpreted such laws, especially when first introduced in VDL, NSW and Victoria, as an attempt to maintain control over populations that contained substantial numbers of former convicts. It was under these vagrancy and public order laws that many women from various ethnic backgrounds, including Indigenous women as well as the majority of Irish women, went to gaol in colonial Victoria.<sup>52</sup>

Irish-born Senior Constable John Barry of Bendigo, in his influential 1888 *Victorian Police Guide*, hailed vagrancy legislation as 'probably the most useful' and 'certainly the most elastic law in the colony'. Constables, he advised, should 'watch narrowly all persons having no visible means of support'.<sup>53</sup> Although Barry clearly endorsed public order policing, it was controversial at the time and remains today a contentious issue among historians of crime. In the absence of an official poor law in Australia, were the police acting benevolently, in a social welfare role, by removing the homeless, unemployed and destitute, including many women and children, from the streets, as well as trying to stamp out public drunkenness and brawling? Or were such interventions repressive: an attempt by the state through the police, not to apprehend genuine criminals, but to regulate and control working-class life, labour and

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<sup>50</sup> For a general analysis of female recidivist offenders in colonial Victoria, see A.J. Piper and Victoria Nagy, 'Versatile Offending: Criminal Careers of Female Prisoners in Australia, 1860-1920', *Journal of Interdisciplinary History*, vol. 48, no. 2, 2017, pp. 187-210. Unfortunately, this article does not single out the Irish as a distinctive group.

<sup>51</sup> Williams, *Ordered to the Island*, pp. 76-7, 176, 188.

<sup>52</sup> Julie Kimber, 'Poor Laws: A Historiography of Vagrancy in Australia', *History Compass*, vol. 11, no. 8, 2013, pp. 538-41; Susanne Davies, "'Ragged ... dirty, infamous and obscene": The "Vagrant" in Late-Nineteenth-Century Melbourne', in David Philips and Susanne Davies, eds, *A Nation of Rogues? Crime, Law and Punishment in Colonial Australia*, Melbourne: Melbourne University Press, 1994, pp. 141-65.

<sup>53</sup> John Barry, *Victorian Police Guide*, Sandhurst [Bendigo]: J.W. Burrows, 1888, pp. 20, 105.

culture?<sup>54</sup> The numbers of recorded attacks on constables, especially by the Irish, certainly point to significant communal resistance to police actions. In addition, the fact that around 30-40 per cent of those arrested during the 1860s were acquitted by magistrates suggests that the courts too felt the police were frequently over-zealous in their application of the draconian vagrancy laws.<sup>55</sup>

Although larger proportions of Irish women were arrested and convicted than English women, the types of offences committed by the two ethnic groups were similar, and this was true for Irish and English men as well. The alleged fondness of the Irish for alcohol features prominently in many explanations of Irish criminal behaviour, yet Table 8 in the Appendix shows that in 1862 virtually the same proportion of English women (43 per cent), as Irish women (44 per cent), were arrested for offences involving drink. Irish men were somewhat more likely than English men to be arrested for drunkenness, but not massively so: of Irish male arrests in 1862, 48 per cent were drink-related compared to 41 per cent of English male arrests.<sup>56</sup>

According to Table 8, nearly 9 per cent of all Irish female arrests in 1862 were for the offence of being a 'disorderly prostitute'. Prostitution was not a crime in itself at the time, but, under vagrancy laws, behaving in what the police considered a 'disorderly' fashion was. And, as Table 9 shows, the Irish were very prominent among those arrested throughout the 1860s for this particular crime. However, being a 'disorderly prostitute' represents only a fraction of all arrests of women regarded by the police as 'common prostitutes'. According to Table 10, by far the largest number of prostitute arrests during the 1860s were for drunkenness, followed by disorderly conduct, vagrancy and larceny.<sup>57</sup>

The issue of Irish women and prostitution was a highly contentious one during the nineteenth century, as Maria Luddy has demonstrated in her history of prostitution in Ireland.<sup>58</sup> And it was no less contentious in the diaspora. In colonial Australia, as in Ireland, Irish men and especially clergy were vociferous in their denials that Catholic women ever worked as prostitutes. Yet, from the 1840s onwards, critics of Irish assisted immigration were quick to accuse young, single women from rural Ireland of being 'whores', prostitutes and paupers.<sup>59</sup> In Melbourne, Irish men responded by holding public meetings at which they pledged their 'protection' to these 'highly virtuous and deserving' Irish girls, while at the same time declaring that prostitution was unknown in the pages of Irish history.<sup>60</sup> Some later historians, like Sharon Morgan, have uncovered evidence to support accusations of prostitution made by

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<sup>54</sup> For a largely positive interpretation of vagrancy laws, see Dean Wilson, 'Policing Poverty', *Australian Historical Studies*, vol. 36, no. 125, 2005, pp. 97-112.

<sup>55</sup> *Criminal Statistics*, 1863, pp. 5, 7, 34, 36; *Criminal Statistics*, 1868, pp. 7, 9, 38, 41. By contrast, only around 15 per cent of defendants were acquitted by magistrates during the early and mid-twentieth century in Australia. S.K. Mukherjee, *Crime Trends in Twentieth-Century Australia*, Sydney: George Allen and Unwin, 1981, p. 137.

<sup>56</sup> *Criminal Statistics*, 1863, p. 35.

<sup>57</sup> For an examination of the links between prostitution and larceny among Melbourne's female criminal subcultures, see A.J. Piper, "'Us girls won't put one another away': Relations among Melbourne's Prostitute Pickpockets, 1860-1920', *Women's History Review*, vol. 27, no. 2, 2018, pp. 247-65.

<sup>58</sup> Maria Luddy, *Prostitution and Irish Society, 1800-1940*, Cambridge: Cambridge University Press, 2007, pp. 1-16.

<sup>59</sup> Paula Hamilton, "'Tipperarifying the moral atmosphere": Irish Catholic Immigration and the State, 1840-60', in Sydney Labour History Group, eds, *What Rough Beast? The State and Social Order in Australian History*, Sydney: George Allen and Unwin, 1982, pp. 13-30.

<sup>60</sup> *Melbourne Morning Herald*, 19 April 1850, p. 3, 11 May 1850, p. 3; 'Garryowen' [Edmund Finn], *The Chronicles of Early Melbourne, 1835 to 1852*, 1888, vol. 1, Melbourne: Heritage Publications, [1983], pp. 494-5.

contemporary Irish critics; other historians, like Trevor McClaughlin, have largely ignored such claims or dismissed them as exaggerated.<sup>61</sup> However, the crime statistics summarised in Table 9 confirm Morgan's analysis by showing that during the 1860s around 40-50 per cent of arrests of 'disorderly prostitutes' in Victoria involved Irish women. Moreover, throughout the period from the 1850s into the 1880s, Irish female immigrants were often taken into police custody for offences associated with prostitution, like drunkenness, disorderly conduct and vagrancy. This fits with the picture that has emerged from a handful of studies of Irish communities elsewhere in the diaspora during the late nineteenth century. They too have found much evidence of Irish women working in the sex industry in large English and American cities.<sup>62</sup>

Some examples of Irish women imprisoned repeatedly for public order offences helps throw more light on these women's backgrounds and experiences. Fairly typical of ex-convict Irish women prisoners is Mary Ann Collins, born about 1814, alias Annie Collins or Ann Dunigan, a Catholic who was transported from England to VDL in 1842. A small woman, she was only 4 feet 11 inches tall (1.5 metres), weighed 8 stone 5 pounds (53 kilos), and had a sallow complexion, black hair and blue eyes. Like the majority of women prisoners, she had been a servant at one time, but, unlike most, she could read and write 'a little'. However, between 1860 and 1876, she accumulated at least 20 convictions before the Melbourne police court, with her combined prison sentences totalling nearly six years. Half her convictions were for vagrancy, which usually earned her three to six months' imprisonment with hard labour; others were for being a 'disorderly prostitute', 'insulting behaviour', drunkenness, larceny and assault.<sup>63</sup> Collins's prison record would suggest that, after serving her sentence in VDL, she came to Victoria during the 1850s in search of work as a servant. But, she had difficulty finding or maintaining a job and, by the 1860s, then aged in her fifties, she was working as a prostitute on the streets of Melbourne.

An interesting example of a free Irish immigrant living in regional Victoria who was also in and out of prison repeatedly is Isabella Kew Ah, born in 1852 and sometimes known as Mary Ah Kew. She was a Catholic, but, unlike most women prisoners, she could read and write. An upholsterer by trade, she, like Mary Ann Collins, stood only 4 feet 11 inches tall (1.5 metres). Her family name indicates that she had married a Chinese immigrant and her occupation suggests that she and her husband had been employed in furniture making: an industry that attracted many Chinese ex-diggers.<sup>64</sup> During 1876, Isabella Kew Ah, who had at least 13 previous convictions mostly for drunkenness, was sentenced twice by magistrates at Echuca in northern Victoria for threatening someone's life. In 1877, she was imprisoned for assault and, in 1878-9, for having 'no visible means of support'. In 1886-7, she spent nine months in prison for another assault and for using 'indecent and obscene language' and, in 1889, she was sentenced to a further nine months for being an 'habitual drunkard' and using 'obscene language'. But, only a month into the latter sentence, she was transferred from Bendigo gaol

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<sup>61</sup> Morgan, 'Irishwomen in Port Phillip and Victoria', p. 243; McClaughlin, 'Vulnerable Irish Women in Mid-to-Late Nineteenth-Century Australia', pp. 159-60.

<sup>62</sup> W.J. Lowe, *The Irish in Mid-Victorian Lancashire: The Shaping of a Working-Class Community*, New York and Bern: Peter Lang, 1989, pp. 102-3; T.J. Gilfoyle, *City of Eros: New York City, Prostitution and the Commercialization of Sex, 1790-1920*, New York: W.W. Norton, 1992, pp. 62, 65-7.

<sup>63</sup> Mary Ann Collins, no. 1440, Central Register of Female Prisoners, vol. 2, 1861-9, nos 751-1507, PROV, VPRS 516-P1.

<sup>64</sup> Kathryn Cronin, *Colonial Casualties: Chinese in Early Victoria*, Melbourne: Melbourne University Press, 1982, pp. 126-8, 144-5.

to Melbourne's Kew Lunatic Asylum.<sup>65</sup> As she was convicted of having 'no visible means of support', Kew Ah may well have separated from her husband and was possibly working as a prostitute, but her committal to a lunatic asylum was probably a consequence of her violent language and behaviour.

Most criminologists consider public order offences, like those committed by Collins and Kew Ah, which were often associated with prostitution, as 'police-generated' crime. Unlike physical assault or property theft, there are usually no victims in public order crime.<sup>66</sup> In colonial Victoria, the number of arrests of women thought to be prostitutes was very much a function of official imperatives and police attitudes; arrests were far from being an accurate gauge of the extent of prostitution. Dean Wilson has shown in his study of Melbourne policing between 1853 and 1923 that there was a crackdown on prostitution during the late 1850s after a press outcry had alleged that 'vice enjoys unbounded licence in our streets' and the city's police were 'too weak to enforce order'.<sup>67</sup> Throughout the 1860s and 1870s, however, under Chief Commissioner Frederick Standish, a fairly tolerant attitude prevailed as Standish looked upon prostitution as an inevitability.<sup>68</sup> Only after an 1882-3 royal commission into policing, prompted by the Kelly outbreak, had heard evidence of corrupt relationships existing between Melbourne's police and the city's many brothel keepers did a new police commissioner, Dublin-born Protestant Hussey Malone Chomley, adopt a more aggressive approach. But even then, police sought essentially to confine prostitutes to inner working-class suburbs, like Fitzroy and Carlton, thus removing them from major city thoroughfares where their activities might offend middle-class citizens; they certainly did not attempt to stamp out prostitution entirely.<sup>69</sup> Nonetheless, arrests for vagrancy reached new heights in the late 1880s.<sup>70</sup> The marked increase between 1876 and 1887 in the proportion of Irish women convicted of public order offences, evident in Table 1, may well reflect this more intensive policing of prostitutes during the 1880s.

#### *Alternatives to Gaol: Laundries, Reformatories, Retreats and an 'Invalid' Prison*

In the absence of a poor law, colonial governments often subsidised private charitable initiatives aimed to relieve poverty and hopefully prevent crime. Beginning during the 1850s, efforts were made by both religious organisations and lay individuals to divert women and men accused of public order offences away from prison. The Catholic Church, while continuing to proclaim Irish female chastity as unrivalled, was nonetheless quick to establish institutions to house women and girls belonging to what it called the 'neglected, criminal and dangerous classes'. Cork-born Bishop James Goold opened two convents in the inner northern suburbs of Melbourne: one in Fitzroy in 1857 was run by the Sisters of Mercy; the other in Abbotsford in 1863 was run by the Sisters of the Good Shepherd. The Fitzroy convent included an orphanage, a school and an employment bureau for domestic servants, while the Abbotsford convent included a magdalen asylum for 'fallen penitent women', a reformatory for young female prisoners and an industrial school for destitute or neglected girls. Between 1864 and 1868, 310 'fallen' women 'atoning for the past' worked in the commercial laundry attached to the

<sup>65</sup> Isabella Kew Ah, no. 2847, Central Register of Female Prisoners, vol. 6, 1874-6, nos 2430-2871, PROV, VPRS 516-P1.

<sup>66</sup> Mukherjee, *Crime Trends in Twentieth-Century Australia*, p. 137.

<sup>67</sup> *Argus*, 17 November 1858, p. 4.

<sup>68</sup> Dean Wilson, *The Beat: Policing a Victorian City*, Melbourne: Circa, 2006, pp. 186-93.

<sup>69</sup> Chris McConville, 'The Location of Melbourne's Prostitutes, 1870-1920', *Historical Studies*, vol. 19, no. 74, 1980, pp. 86, 89.

<sup>70</sup> Wilson, *The Beat*, pp. 194-8; Haldane, *The People's Force*, pp. 90-99; Davies, "'Ragged, dirty ... infamous and obscene'", p. 155.

Abbotsford magdalen asylum, while 204 girls were trained for jobs as servants in the convent's reformatory and industrial school. City magistrates' courts were encouraged by government to send young women and girls convicted of vagrancy offences and considered capable of reform to Abbotsford for up to five years, rather than gaoling them for short periods, with the government paying an annual subsidy to the convent for their upkeep.<sup>71</sup>

Irish Protestants too were active in Melbourne from the 1850s attempting to 'reclaim' women and girls before, during or after they had been sentenced to prison. Dublin-born evangelical, Dr John Singleton, was a regular prison visitor and often an outspoken critic of penal policy. In 1871, he opened a home for 'fallen and friendless' women in working-class Collingwood, aimed especially at unmarried mothers and those recently released from prison. During the 1880s, he added night shelters for homeless women and men.<sup>72</sup> Efforts at keeping women out of prison or reclaiming them on release largely focused on younger women and first-time offenders, which may perhaps have contributed to the preponderance of older repeat offenders in our samples.<sup>73</sup>

Another Irish doctor prominent in efforts to divert people from prison was Cork-born Dr Charles M'Carthy, who, from the late 1850s onwards, fought hard to convince Victoria's politicians, including sceptical Irish premiers like John O'Shanassy and Charles Gavan Duffy, that drunkenness should be regarded as a medical problem, not a criminal one. Dipsomania was a disease, according to M'Carthy, not a moral failing and certainly not a crime.<sup>74</sup> In 1872, M'Carthy's lobbying helped get an Inebriate Act through parliament and, from 1873, he operated a licensed inebriate retreat for men in the working-class suburb of Northcote, the first institution of its kind in Australia. However, when government funding ran out, M'Carthy was forced to accept paying patients, which inevitably restricted the retreat's services to a middle-class clientele. Under new inebriate legislation passed in 1888-9, the government took direct control of the institution, but, with the onset of the 1890s' depression and M'Carthy's retirement in 1892, the retreat was soon forced to close.<sup>75</sup>

The focus by churches and philanthropists on reforming young offenders and the failure of M'Carthy's inebriate asylum meant that non-custodial accommodation and treatment for older working-class alcoholics was virtually non-existent in colonial Victoria. This was especially true if, like many Irish women, alcoholics were vagrants or prostitutes as well. When apprehended by the police, most of these women ended up in gaol, even though Victoria's accommodation for female prisoners was grossly inadequate. No designated women's gaol existed in the colony until 1894. Instead, during much of the 1850s and 1860s, female prisoners were held on hulks moored in Hobson's Bay off the port of Williamstown. Later they were accommodated in improvised segregated spaces within male prisons, even though prison

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<sup>71</sup> *Advocate* (Melbourne), 29 February 1868, p. 16, 13 March 1869, p. 7, 4 September 1869, p. 1; *Herald* (Melbourne), 23 August 1864, p. 3; *Australasian* (Melbourne), 15 March 1873, p. 6. See also Catherine Kovesi, 'Pitch your tents on distant shores': *A History of the Sisters of the Good Shepherd in Australia, Aotearoa/New Zealand and Tahiti*, Sydney: Playright Publishing, 2006, pp. 61-78.

<sup>72</sup> John Singleton, *A Narrative of Incidents in the Eventful Life of a Physician*, Melbourne: M.L. Hutchinson, 1891, pp. 206-10, 245-70, 318-20.

<sup>73</sup> The number of older repeat offenders convicted of public order offences increased in Victoria's general female prison population especially from the 1880s. See Piper and Nagy, 'Versatile Offending', pp. 194-6.

<sup>74</sup> [Charles M'Carthy], *Report of the Sub-Committee on the Inebriate Question*, Melbourne: Stillwell and Knight, 1872; Stephen Garton, "'Once a drunkard always a drunkard": Social Reform and the Problem of "Habitual Drunkenness" in Australia, 1880-1914', *Labour History*, no. 53, 1987, pp. 41-2, 45.

<sup>75</sup> *Argus*, 20 February 1872, p. 6; A.M. Mitchell, 'McCarthy, Charles (1814-1896)', *Australian Dictionary of Biography*, <http://adb.anu.edu.au/biography/mccarthy-charles-4066/text6483>, accessed 24 October 2018.

governors frequently complained that such women were difficult to control, that there was little work to occupy them and that it was almost impossible to keep them strictly apart from the men.<sup>76</sup>

By the 1870s and 1880s, the authorities were increasingly concerned at the numbers of both women and men being gaoled for minor offences against public order. In his 1886 report, Hayter, the government statistician, drew particular attention to those being repeatedly arrested for what he called ‘minor offences, hardly amounting to crimes’ at all, such as drunkenness and other infractions of ‘good order’. According to him, in 1885 only 10 per cent of arrests ‘were for crimes in the strict sense of the word’.<sup>77</sup> It would appear that, like Dr M’Carthy, Hayter believed drunkenness should not be classed as a crime. The prison authorities were even more alarmed at the situation. In 1872, the governor of Melbourne Gaol, J.B. Castieau, wrote that several elderly women and men, then dying in the prison infirmary, had been sent to gaol by magistrates simply out of ‘charity’, none having ‘committed any offence except that of being ill & without friends’. Magistrates convicted them of vagrancy in order to give them ‘shelter’, there being ‘little shelter for the poor and miserable’ in Melbourne but the gaol or the benevolent asylum—and, at the time, the latter institution was ‘full to the brim’.<sup>78</sup> In his 1876 annual report, Inspector-General of Prisons George Duncan complained that even the colony’s benevolent asylums would not accept sick vagrants or drunkards, so in order to ‘rescue them from exposure and starvation’ they had to be arrested and imprisoned. As a consequence, gaols were being ‘turned into quasi hospitals and benevolent asylums’.<sup>79</sup> Or, as a later historian of colonial Victoria’s social welfare system bluntly put it: gaols were ‘arguably Australia’s first welfare institutions’.<sup>80</sup>

By the late 1870s, the problem was considered so serious in Victoria that the regional gaol in Geelong near Melbourne was converted into what, in 1882, J.B. Castieau, by then the penal inspector-general, termed an ‘invalid prison’. It was intended, he wrote, to accommodate ‘old and worn-out prisoners’, who had been taken into custody due to their ‘destitution’. By December 1881, Geelong housed 132 prisoners, a quarter of them women, most having been transferred from Melbourne gaols. At any one time about 20 per cent of Geelong’s inmates were being cared for in the infirmary, a far higher proportion than in any other Victorian gaol. But, according to Castieau, when released on completion of their sentences, these prisoners were ‘quite unable to cope with the outside world’ and many ‘drift[ed] ... back to their old quarters’.<sup>81</sup> A historian of crime in NSW has written that during the 1880s and 1890s: ‘To an extent unsurpassed before or since, prisons served as warehouses for drunkards, vagrants, the aged and infirm, and lunatics, in addition to the more conventional offenders’.<sup>82</sup> Clearly, the same was true of Victoria.

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<sup>76</sup> For repeated complaints about the problems created by female prisoners in Melbourne Gaol during the 1870s, see Mark Finnane, ed., *The Difficulties of My Position: The Diaries of Prison Governor John Buckley Castieau, 1855-84*, Canberra: National Library of Australia, 2004, pp. 66-9, 125-7, 135-6, 155, 158.

<sup>77</sup> *Victorian Year Book, 1885-6*, p. 578.

<sup>78</sup> Finnane, ed., *The Difficulties of My Position*, p. 204. For overcrowding and the Irish in the city’s Benevolent Asylum, see Mary Kehoe, *The Melbourne Benevolent Asylum: Hotham’s Premier Building*, Melbourne: Hotham History Project, 1998, pp. 33-6, 53-5, 58-60.

<sup>79</sup> Quoted in Peter Lynn and George Armstrong, *From Pentonville to Pentridge: A History of Prisons in Victoria*, Melbourne: State Library of Victoria, 1996, p. 97.

<sup>80</sup> Richard Kennedy, ‘Charity and Ideology in Colonial Victoria’, in Richard Kennedy, ed., *Australian Welfare History: Critical Essays*, Melbourne: Macmillan, 1982, p. 67.

<sup>81</sup> *Penal Establishments and Gaols. Report of the Inspector General for the Year 1881*, Melbourne: John Ferres, 1882, pp. 2, 5, 17.

<sup>82</sup> Grabosky, *Sydney in Ferment*, pp. 98, 87.

## Conclusion

Historians who have made sweeping assertions about high crime rates among Irish immigrants, identifying violent crime as common and most offenders as young males, are simply wrong—certainly as regards colonial Victoria and probably more broadly as well. Our samples indicate that, as in the general prison population, males exceeded females among Irish prisoners, but Irish women composed a far larger proportion of the female prison population than did Irish men of the male population. Most of these women, who were not young, had been incarcerated for crimes against ‘good order’: in other words, for non-violent, victimless offences. And, by the late 1880s, a majority of Irish male prisoners too were middle aged and had been convicted of public order offences.

Examining colonial Victorian figures for Irish arrests, convictions and prison sentences raises larger questions concerning the very nature of crime of itself. Most Irish women and many Irish men gaoled between 1855 and 1887 would not today be sent to prison, because their actions would not be classed as criminal, or because they would be seen as having problems that required non-custodial interventions.<sup>83</sup> Of course, we should not seek to impose modern standards upon the past, but during the 1870s and 1880s even those running the colony’s prisons had begun to complain in official reports that the gaols were full of people who were not really criminals and who would be better dealt with in specialist institutions catering for the poor, sick, old and mad. In the absence of a poor law, many such people, who in England or Ireland would have been sent to a workhouse, were in Victoria going to gaol. But the prison authorities went beyond complaining when they actually created an ‘invalid prison’ in Geelong in the late 1870s for ‘decrepit’ male and female prisoners incarcerated primarily due to their ‘destitution’.

When we look closely at who the Irish in prison actually were and what types of offences many of them had been convicted of, it is impossible to maintain a belief that violent crime was a defining characteristic of the Irish immigrant community. The real problems the community faced were associated with unemployment, poverty, homelessness, alcoholism, poor health and, increasingly by the 1880s, old age, while ethnic and sectarian prejudice probably had a significant negative impact as well. And we should not overlook gender either, as male expectations of acceptable female behaviour undoubtedly played a role in sending many impoverished and alcoholic women to gaol, whereas men committing similar offences were more likely to be fined. Such information clearly contradicts A.M. Topp’s assertion in 1881 that the Irish were an innately ‘lawless’ race, with a strong ‘tendency to resort to personal violence’, and it also calls into question Patrick O’Farrell’s assessment in 1986 that ‘the Irish reputation for violence and crime’ in colonial Australia was justified.<sup>84</sup>

## Appendix: Statistical Tables

*Table 1: Profiles of Irish-born Female Prisoners in Victoria in 1857, 1868, 1876 and 1887*<sup>85</sup>

<sup>83</sup> Today Victoria and Queensland remain the only two Australian states in which people can still be gaoled for public drunkenness. See *Age*, 6 December 2018, [www.theage.com.au](http://www.theage.com.au), accessed 12 December 2018.

<sup>84</sup> Topp, ‘A Few More Words on the Irish Question’, pp. 210-11; O’Farrell, *The Irish in Australia*, pp. 68-9.

<sup>85</sup> Table 1 is based on random samples of Irish-born women committed to prison in Victoria during the periods: 1857: 29 Irish prisoners; 1868: 36 Irish prisoners; 1876 (January-June): 56 Irish prisoners; and 1887 (January-June): 21 Irish prisoners. Central Register of Female Prisoners, vols 1, 2, 5, 6, 9 and 10, PROV, VPRS 516-P1 Microfiche.

CHARACTERISTICS	1857	1868	1876	1887
Irish-born as % of all females sentenced in Victoria	43.4	51.4	38.0	26.2
% of Irish women convicted of a public order offence	65.6	76.2	69.1	94.4
% of Irish women convicted of a property offence	27.1	20.8	22.7	5.6
% of Irish prisoners who were ex-convicts	44.8	8.3	0.0	0.0
% of Irish prisoners having previous convictions	55.2	81.1	45.6	57.1
% of Irish prisoners breaching prison regulations	62.1	61.1	22.8	4.8
% of Irish prisoners married or widowed	69.0	69.4	N/A	N/A
Average age of Irish women prisoners in years	34	36	39	45
% of Irish prisoners with physical marks or scars	69.0	66.7	7.0	9.5
% of Irish prisoners who were Catholics	89.6	80.5	77.2	90.5
% of Irish prisoners previously employed as servants	89.3	52.8	73.7	61.9
% of Irish prisoners who could read & write English	41.4	38.9	45.6	52.4

Table 2: Profiles of Irish-born Male Prisoners in Victoria in 1855, 1869, 1875-6 and 1887<sup>86</sup>

CHARACTERISTICS	1855	1869	1875-6	1887
Irish-born as % of all males sentenced in Victoria	15.3	24.8	17.1	15.1
% of Irish men convicted of a public order offence	13.5	2.6	31.1	53.3
% of Irish men convicted of a property offence	72.0	85.0	43.1	28.3
% of Irish prisoners who were ex-convicts	49.1	13.1	0.0	0.0
% of Irish prisoners having previous convictions	29.1	36.7	28.6	34.1
% of Irish prisoners breaching prison regulations	87.3	66.6	33.8	12.2
% of Irish prisoners married or widowed	29.0	30.0	N/A	N/A
Average age of Irish male prisoners in years	35	40	41	43
% of Irish prisoners with physical marks or scars	94.5	100.0	16.9	39.0
% of Irish prisoners who were Catholics	70.9	70.0	85.7	65.8
% of Irish prisoners previously employed as labourers	43.6	40.7	45.5	43.9
% of Irish prisoners who could read & write English	60.0	66.6	68.8	90.2

Table 3: Irish-born Women in Victoria, 1846-91<sup>87</sup>

CENSUS DATE	NUMBER OF IRISH-BORN WOMEN	IRISH WOMEN AS PERCENTAGE OF ALL IRISH IMMIGRANTS	IRISH WOMEN AS PERCENTAGE OF ALL WOMEN
1846	4,089	44.8	32.2
1851	6,904	47.2	22.2
1857	29,440	45.6	20.1
1861	39,984	45.9	18.9
1871	51,270	51.0	15.5
1881	45,507	52.5	11.1

<sup>86</sup> Table 2 is based on random samples of Irish-born men committed to prison in Victoria during the periods: 1855 (February-July): 55 Irish prisoners; 1869 (January-June): 30 Irish prisoners; 1875-6 (November-April): 77 Irish prisoners; and 1887 (July-December): 41 Irish prisoners. Central Register of Male Prisoners, vols 4, 12, 23 and 39, PROV, VPRS 516-P0000 Microfiche.

<sup>87</sup> ABS, 3105.0.65.001, AHPS, 2014, Table 8.2, Population, Sex and Country of Birth, Victoria, Census Years 1854-91, www.abs.gov.au, accessed 30 September 2018. For the 1846 and 1851 census figures, see Vamplew, ed., *Australians: Historical Statistics*, p. 10.

1891	24,794	55.0	8.0
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Table 4: Irish-born Men in Victoria, 1846-91<sup>88</sup>

CENSUS DATE	NUMBER OF IRISH-BORN MEN	IRISH MEN AS PERCENTAGE OF ALL IRISH IMMIGRANTS	IRISH MEN AS PERCENTAGE OF ALL MEN
1846	5,037	55.2	24.9
1851	7,714	52.8	16.7
1857	35,152	54.4	13.3
1861	47,176	54.1	14.3
1871	49,198	49.0	12.3
1881	41,226	47.5	9.1
1891	20,247	45.0	6.5

Table 5: Percentages of Australian, Irish and English Women Arrested and Convicted in Victoria, 1862<sup>89</sup>

ARRESTS, CONVICTIONS AND POPULATION	PERCENTAGE AUSTRALIAN WOMEN	PERCENTAGE IRISH WOMEN	PERCENTAGE ENGLISH WOMEN
FEMALE ARRESTS	9.4	52.4	26.1
FEMALE CONVICTIONS IN MAGISTRATES' COURTS	8.8	54.7	24.7
FEMALE CONVICTIONS IN HIGHER COURTS	9.8	44.3	29.5
% OF TOTAL FEMALE POPULATION 1861	36.9	18.9	29.1

Table 6: Percentages of Australian, Irish and English Men Arrested and Convicted in Victoria, 1862<sup>90</sup>

ARRESTS, CONVICTIONS AND POPULATION	PERCENTAGE AUSTRALIAN MEN	PERCENTAGE IRISH MEN	PERCENTAGE ENGLISH MEN
MALE ARRESTS	3.4	32.4	39.6
MALE CONVICTIONS IN MAGISTRATES' COURTS	2.5	34.4	38.9
MALE CONVICTIONS IN HIGHER COURTS	6.7	23.1	45.9
% OF TOTAL MALE POPULATION	24.6	14.3	32.9

Table 7: Numbers of Irish and English Arrests and Percentages of Convictions in Victoria, 1862<sup>91</sup>

<sup>88</sup> Ibid.

<sup>89</sup> *Criminal Statistics*, 1863, pp. 34-9. It is important to note that the percentages in Tables 5-10 are based on arrests and convictions, not on individuals. In 1876, for example, of 5,780 Irish individuals arrested in Victoria, 30 per cent faced more than one charge during the course of that year. *Victorian Year Book*, 1876-7, p. 190.

<sup>90</sup> *Criminal Statistics*, 1863, pp. 34-9.

<sup>91</sup> Ibid., p. 48.

ARRESTS AND CONVICTIONS	IRISH MEN	IRISH WOMEN	ENGLISH MEN	ENGLISH WOMEN
NUMBER OF ARRESTS	6,444	2,158	7,882	1,077
% CONVICTED IN MAGISTRATES' COURTS	67.2	64.0	62.0	58.1
% CONVICTED IN HIGHER COURTS	2.2	1.2	3.6	1.7

*Table 8: Crimes for which Irish and English Women were Arrested by Percentage of all Irish and English Female Arrests, 1862<sup>92</sup>*

1862	PERCENTAGE IRISH WOMEN	PERCENTAGE ENGLISH WOMEN
OFFENCES AGAINST THE PERSON		
Assault	1.9	1.2
OFFENCES AGAINST PROPERTY		
Larceny	11.6	12.7
Malicious damage, including arson	3.2	2.1
OFFENCES AGAINST PUBLIC ORDER		
Disorderly character	1.9	1.7
Disorderly prostitute	8.7	6.4
Drunkenness or drunk & disorderly	43.6	42.6
Keeping a common brothel	0.9	1.3
Lunacy	2.7	4.6
Under Vagrancy Act	11.4	10.7
Obscene language	8.7	7.5
Other	5.4	9.2
TOTAL	100.0	100.0

*Table 9: Arrests in Victoria for being a 'Disorderly Prostitute' by Birthplace, 1862 and 1867<sup>93</sup>*

BIRTHPLACE	PERCENTAGE, 1862	PERCENTAGE, 1867
IRELAND	49.9	39.9
ENGLAND	18.4	31.9
SCOTLAND	8.0	8.7
WALES	0.3	0.9
AUSTRALIAN COLONIES	21.3	9.6
OTHER BRITISH COLONIES	0.5	8.4
UNITED STATES	1.1	0.6
EUROPE	0.5	---
TOTAL	100.0	100.0

*Table 10: Arrests of Women Classed as Prostitutes in Victoria: Offences by Percentage, 1862 and 1867<sup>94</sup>*

<sup>92</sup> Ibid., pp. 34-5.

<sup>93</sup> Ibid., p. 35; *Criminal Statistics*, 1868, p. 39.

<sup>94</sup> *Criminal Statistics*, 1863, pp. 22-3; *Criminal Statistics*, 1868, pp. 28-30.

TYPES OF OFFENCE	1,671 ARRESTS BY PERCENTAGE OF OFFENCES, 1862	2,190 ARRESTS BY PERCENTAGE OF OFFENCES, 1867
OFFENCES AGAINST THE PERSON		
Assault	1.3	1.3
OFFENCES AGAINST PROPERTY		
Larceny	12.3	10.9
Robbery	2.0	0.2
Wilful damage, including arson	2.3	2.2
OFFENCES AGAINST PUBLIC ORDER		
Disorderly prostitute	22.4	10.4
Drunkenness or drunk & disorderly	35.4	26.0
Indecent conduct or exposure	0.5	1.0
Keeping a common brothel	2.4	1.5
Under Vagrancy Act	10.1	18.0
Obscene language	8.4	6.0
Riot or breach of peace	1.5	14.5
Lunacy	0.2	0.6
Other	1.2	7.4
TOTAL	100.0	100.0