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Molloy, C. [orcid.org/0000-0002-5420-8830](https://orcid.org/0000-0002-5420-8830) and O'Donnell, I. (2025) *The Kerry Babies, criminology, and Reinhart Koselleck*. *Criminology & Criminal Justice*, 25 (2). 530 -548. ISSN 1748-8958

<https://doi.org/10.1177/17488958221126674>

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Article

# The Kerry Babies, criminology, and Reinhart Koselleck

Criminology &amp; Criminal Justice

1–19

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DOI: 10.1177/17488958221126674

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## Abstract

The Kerry Babies case was a criminal investigation that followed the discovery of a dead infant on a beach in the southwest of Ireland in April 1984. Charges were laid and dismissed. A tribunal of inquiry into alleged police malpractice followed, and the case returned to the courts 35 years later. This paper takes a multidimensional approach to historical time, drawing on the works of German philosopher Reinhart Koselleck to analyse the case, its legacy, and its implications for criminological theory. A Koselleckian approach – drawing in particular on the role of anachronisms, the mobilisation of memory and the categories of experience and expectation – facilitates a novel perspective on child killing, unmarried motherhood, and policing in 20th-century Ireland.

## Keywords

Historical criminology, Kerry Babies, Reinhart Koselleck, temporality, unmarried motherhood

## Introduction

While the use of historical approaches in criminology enjoys a vibrant lineage (e.g. Garland, 2001; King, 2000; Pearson, 1983), criminologists have recently sought to grapple with the ‘conceptual, theoretical and methodological issues raised at the conjunction of criminology and the historical’ (Churchill et al., 2022: 5). This work has mostly proceeded under the label of ‘historical criminology’ (e.g. Churchill, 2018; Lawrence, 2019), and the essence of such an approach lies in its engagement with time, conceived of not merely in chronological terms, but as embodied, tensed, eventful, and characterised by flow and change (Churchill et al., 2022). Historical criminology constitutes an

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orientation in which research into crime and justice is accompanied by a conscious foregrounding of the fluid and dynamic nature of temporality.

Historical criminology has been applied with profit to a variety of issues across a range of jurisdictions from female imprisonment in 19th-century Malta (Knepper and Scicluna, 2010) to moral panics in 20th-century Australia (Bleakley, 2022). Channing (2020) and Guiney (2020) have availed of historical research to shed light on the policing of political activism and the dynamics of penal policy respectively, which demonstrates the useful insights provided by historical criminology into contemporary criminal justice debates. A feminist perspective on historical criminology has also emerged through the works of Nagy (2021) and Piper (2018) which emphasises the contribution that such an approach provides regarding female experiences of offending, victimisation and incarceration. Although a detailed literature review is outside the bounds of this paper, recently published volumes edited by Kehoe and Pfeifer (2021) and Knepper and Johansen (2016) indicate the extent to which such an approach is flourishing. Despite such advances, Yeomans et al. (2020) have described the current interaction between criminology and history as amounting to little more than ‘conversations in a crowded room’ which struggle to attract a wider audience. This paper contributes to the development of a synergetic discourse between criminology and history by employing historical time as the overarching prism through which a pivotal Irish criminal justice episode is re-examined, namely the Kerry Babies case.

The origins of this unsolved criminal case are to be found in April 1984, when the body of a male infant, who had been stabbed 28 times, washed up on White Strand Beach in Cahirciveen, County Kerry. During the murder investigation that followed, the attention of An Garda Síochána [Guardians of the Peace; Irish police force] focused on an unmarried mother, Joanne Hayes, who had recently given birth in a different part of the same county. Hayes and members of her family were taken in for questioning, and within hours all signed statements in which they admitted to having perpetrated or assisted in the murder and disposal of the Cahirciveen baby (Department of the Taoiseach, 1984; Hayes, 1985).

The discovery of the body of Joanne’s own (dead, probably stillborn) baby, which had been concealed in a waterhole on the Hayes’s family farm in Abbeydorney, and the emergence of forensic evidence which showed she could not have been the mother of the Cahirciveen baby, raised serious questions as to how an entire family could have confessed to a crime they did not commit (Conway, 2014). A tribunal was established to investigate potential Garda misconduct. Yet, the tribunal’s report failed to answer how these false confessions had come about (Tribunal of Inquiry, 1985). The case resurfaced in January 2018 when the investigation into the death of the Cahirciveen baby was re-opened.

This article draws upon a diverse range of primary sources including parliamentary debates, official reports, newspaper articles, and memoirs in order to reconceptualise the implications and legacies of the Kerry Babies case for unmarried motherhood, female sexuality and the policing of deviance. It critiques the historiography which surrounds the episode and argues that while this literature offers a flavour of the zeitgeist of 1980s

Ireland, its associated limitations and collective reliance on a chronological understanding of historical time create an incomplete and, at times, misleading picture.

To shed fresh light on the case, the article then shifts its focus to a multidimensional theory of historical time as outlined in the works of German philosopher Reinhart Koselleck (2002, 2004 [1985], 2018). A Koselleckian approach sees time as multi-layered and considers the past, present and future as distinctive streams with varying velocities that co-exist and intersect. While Koselleck's theory of time is wide-ranging, we focus on three key elements of his approach, namely the role of anachronisms, the mobilisation of memory, and the categories of experience and expectation. By applying the insights that stem from a multidimensional understanding of temporality, we argue that the analytical lens is simultaneously broadened (by adopting a more fluid conception of historical time) and deepened (by offering a more piercing perspective on the reverberations of the Kerry Babies case for Irish criminal justice). We hope that this paper offers a template of sorts for scholars – wherever they happen to be located – who wish to bring criminology into closer and more enlivened conversation with history.

## Historiography

Several core texts approach the case from autobiographical, journalistic, psychological, feminist, sociological and media studies perspectives. One of the most gripping is Joanne Hayes's (1985) memoir *My Story*, which illuminates her family background, her personal experiences of unmarried motherhood and her interpretation of the Kerry Babies tribunal. Yet it is also an understandably selective account in search of public redemption following the harsh findings against the Hayes's family by the tribunal headed by Mr Justice Kevin Lynch (see below, 'Anachronisms').

Maguire (2001) noted that Joanne was at pains to portray herself and her family in a respectable light, by stressing, for instance, their deeply held religious values and practices. Joanne wrote that 'Each evening after tea we would all kneel to say the Rosary . . . Like most Irish families we would never dream of missing mass on Sundays and holy days' (Hayes, 1985: 25). In this way, the memoir offered Joanne the opportunity to frame the narrative surrounding her more positively and to invite the sympathy of readers, while criticising a number of Gardaí who had treated her in a dismissive and unprofessional manner during the investigation. That three Gardaí sued for libel, the publisher was forced to pay approximately IR£72,500 in damages (around €142k in today's money) and bankruptcy nearly ensued (*Sunday Independent*, 12 November 1989: 2), indicates the contested nature of her account.

Apart from Joanne's memoir, three books on the case penned by journalists were published the same year (Colleran and O'Regan, 1985; McCafferty, 1985; O'Halloran, 1985). There is a sense of immediacy and detail to these accounts because the authors were present at the tribunal proceedings. However, the tribunal report was only published in October 1985, and there was a race among these authors to be the first across the finish line in what Kerrigan (1985a: 4) described as the 'Kerry Babies Book Stakes'. This rush to get into print inhibited a complete understanding of what was at issue.

O'Mahony (1992) accused these early autobiographical and journalistic accounts of being sensationalised, personalistic and generalist, and argued that they failed to capture the complexities raised by the case. As a counterbalance he offered a social psychological interpretation, focusing primarily on methods of police interrogation and the phenomenon of the false confession. His analysis was a devastating critique of Mr Justice Lynch's 'personal, probabilistic reasoning' which, he argued, rendered the tribunal report a flawed legal document (p. 231). While there was a whiff of elitism surrounding O'Mahony's 'specialist study' of the case (p. 225), it nevertheless helped to address a key issue that the tribunal overlooked, namely how the Gardai extracted false confessions from members of the Hayes family.

Like O'Mahony, Daly (2017) highlighted the shortcomings of the tribunal's procedures. Her work, however, was situated within a socio-legal and feminist rather than psychological approach, and she linked Joanne's treatment to the broader issue of 'female credibility in courtroom proceedings' (p. 196). Daly's analysis is complemented by Conway's (2017) innovative feminist judgement on whether a new inquiry into the case should be held. Their works align with feminist analyses that focus on the role of women in the social rather than the legal sphere. For instance, McCafferty's (1985) biting commentary on the hypocrisy of Irish society in general (and the Catholic Church in particular) for applying double standards to male and female sexuality situates her book simultaneously within a journalistic and feminist perspective. Likewise, Maguire's (2001) social history approach argues that the Kerry Babies case brought the tension between conservative and liberal Ireland to the fore (through discussion of the status of motherhood) and forced society to re-examine its Catholic 'moral underpinnings' (p. 336).

These feminist accounts offer insight into the patriarchal arrangements of church, society, state and its associated criminal justice apparatus which facilitated Joanne's persecution (and attempted prosecution). However, one limitation of this framework is its tendency to generate a stadial chronology (by which we mean an emphasis on discrete developmental stages) which situates the 1970s as a period of forward momentum for women's rights, the 1980s as a period of backlash (due to the 1983 amendment of the Constitution to recognise the equal right to life of the pregnant woman and the unborn), and the 1990s as a time of onward movement once more as signalled by the election of Mary Robinson as Ireland's first female president (e.g. Maguire, 2001). This stadialism implies a narrative of overall progression in the treatment of women, which may blind researchers to inequalities which continue to characterise the female experience.

Along similar lines to Maguire (2001), Inglis (2003) adopted a sociological lens in portraying the case as a clash between individualism and conservatism. This binary opposition is analytically useful (if perhaps reductionistic) in setting the case within its historical context in terms of the economic recession of the 1980s, rising levels of single parenthood and the emergence of à la carte Catholicism. Inglis's ambition in situating the Kerry Babies case within broader sociological changes in late 20th-century Irish society is laudable, but his wide-ranging scope means that on occasions the narrative lapses into mere description of events as opposed to critical analysis of them.

While Inglis (2003) touched upon the role of the media, situating it as a public watchdog, Goc (2012) offered a more detailed analysis of the representations of motherhood

throughout press coverage of the case. She argued that the press drew upon a competing 'Madonna versus whore' dichotomy in depicting Joanne Hayes. Though her analysis was limited to three newspapers (the *Irish Independent*, *Irish Press* and *Sunday Independent*), and excluded the more liberal *Irish Times*, it demonstrated the value that accrues when an alternative disciplinary lens is applied.

Two points emerge from the above brief review that are worth discussing in further detail. The first is the prominence of a feminist interpretation, which consistently surfaces among journalistic, socio-legal and media studies perspectives. While undoubtedly offering useful insights, this was largely superimposed by the authors; as Maguire (2001) acknowledged, Joanne did not view her case as a feminist issue. There is a discrepancy between a lens which emphasises oppressive and imbalanced gender relations within a given context, and the lived experiences of Joanne Hayes as an unmarried mother.

While numerous studies of the treatment of unmarried mothers in 20th-century Ireland capture the ignominy and marginalisation that accompanied the birth of a child outside of wedlock (e.g. Bradley, 2018; Luddy, 2011), Joanne's experiences do not fit with this narrative of exclusion. Joanne became pregnant three times by Jeremiah Locke (a married man), suffering one miscarriage. Her first child, Yvonne, was born in May 1983 and this did not appear to be an occasion of shame or regret. She spoke openly to her friends and colleagues about her delight at being pregnant, successfully applied for maternity leave, and managed to rear her child at home while keeping her job (McCafferty, 1985; O'Halloran, 1985).

Joanne discovered in October 1983 that she was pregnant again and described this as 'a serious worry because I felt I could not expect my family to accept a second child by this married man of whom they did not approve' (Hayes, 1985: 34). Nevertheless, she enjoyed continued local support. On 23 January 1985, 66 men and women from her home village marched for over an hour outside the building where the tribunal was inquiring into her case, holding signs which read 'Abbeydorney Supports Joanne' (p. 101). The villagers shook her hand and offered words of encouragement and support, and she described these gestures as 'above politics or any other motivation except compassionate good neighbourliness' (p. 101). That is not to say the village was unanimously behind her. An anonymous telephone caller who claimed to be from Abbeydorney blamed her for causing the stress that led to the wife of a local Garda suffering a miscarriage (p. 105). But the balance of public sympathy was clearly in her favour and hundreds of single yellow roses were sent to her during her ordeal as symbols of friendship, warmth and affection (Daly, 2017).

Nor was this support temporary or fleeting. In December 2020 following a High Court case taken against the state regarding her treatment at the 1985 tribunal, Joanne commented that 'the kindness and sense of community we have experienced has helped us through the most challenging moments of this period' (*Irish Examiner*, 19 December 2020: 1). The community response to an unmarried mother and her daughter, in this particular case, was far more consistently sympathetic than an unrefined feminist analysis might be taken to suggest.

The second feature of note which emerges from the existing historiography is its tendency to apply binary and artificial oppositions (conservatism versus individualism/

liberalism, Madonna versus whore) when analysing the case. This lends itself to viewing the actors involved in polarised terms. While Joanne is often represented in the literature as a victim of patriarchal attitudes and an unjust legal system, the Gardaí tend to be cast in the role of villains (e.g. Maguire, 2001). This narrative of the Gardaí as villains persecuting Joanne and her family, however, was not fully accurate. Joanne outlined in her memoir how she had positive experiences of her interactions with Garda Liam Moloney. In August 1983, at the behest of her family, Garda Moloney advised Joanne to break off her liaison with Jeremiah Locke but she did not pay heed (McCafferty, 1985). Joanne's affectionate description of Garda Moloney as 'more of a social worker of sorts than as an enforcer of the law' indicated his efforts were based on compassionate rather than condemnatory motives (Hayes, 1985: 165).

Moreover, Joanne recalled that after she was charged with murder she was visited by Garda Bill Cregan who 'shook my hand warmly and wished me luck'. She described this as 'a brave and typically kind gesture from a man who had the rare ability to allow his humanity to supercede [sic] his garda status' (Hayes, 1985: 50). Joanne's account reveals a multiplicity of experiences and emotions in relation to her interactions with the Gardaí. Binary categorisations, be they on structural or individual levels, often fail to capture the complexities of everyday lived experiences, interactions, and identities, and any history which invokes such dichotomies must be approached with care.

Despite its limitations, the literature sheds important light on the zeitgeist of 1980s Ireland, double standards surrounding male and female sexuality, methods of police interrogation, the gendered nature of the criminal justice system, the impact of Catholic moral values, and media representations of motherhood. While these works adopt diverse approaches, one commonality (with the exception, perhaps, of O'Mahony's theoretically driven analysis) is the adoption of a chronological approach to historical time. Chronology is, of course, an integral part of historical analysis, but it is not the sole vantage point from which to analyse temporality. The following sections argue that when the approach to historical time is shifted from a chronological to a Koselleckian one, further (and even more far-reaching) insights into the nature and legacies of the Kerry Babies case can accrue.

## Anachronisms

A central element of Koselleck's conceptualisation of historical time concerns the use of anachronisms (i.e. chronological inconsistencies). To demonstrate their value in capturing time's multi-layered nature, Koselleck analysed the painting *Alexanderschlacht*, completed by Albrecht Altdorfer in 1529. The painting featured the Battle of Issus in 333 BC when Alexander the Great defeated King Darius's Persian army. Altdorfer researched the number of combatants killed during the battle and inscribed these figures upon the banners in his painting. In this way he 'made conscious use of anachronism so that he could faithfully represent the course of the completed battle' (Koselleck, 2004 [1985]: 9). Moreover, Altdorfer painted the Persian army in 16th-century Turkish uniforms, which reflects the fact that in 1529 Turkish armies were laying siege to Vienna. His use



of anachronism therefore rendered the battle simultaneously contemporary and noncontemporaneous (Koselleck, 2004 [1985]: 10).

Historians tend to distinguish between descriptive and judgemental anachronisms. The former draw upon certain terms and language to define, describe and explain behaviours, while the latter 'impose modern values on a pre-modern world'. While historians tend to tolerate descriptive anachronisms, it is often claimed that the projection of modern values on the past is ahistorical (De Haan, 2015: 792). This section explores the role of anachronisms in the Kerry Babies case through consideration of a recent High Court declaration, and through discussion of the haunting presence of the past.

### *The courts*

In March 2019 – 35 years after dead babies were discovered in Cahirciveen and Abbeydorney – Joanne Hayes, her sister Kathleen, and two brothers Michael and Edmund took proceedings against the Commissioner of An Garda Síochána, the Director of Public Prosecutions (DPP), the Minister for Justice and Equality, Ireland and the Attorney General for the manner in which they were treated during the Garda investigation and subsequent tribunal (though proceedings against the DPP were later discontinued) (*Irish Times*, 7 March 2019: 4). On 18 December 2020, a settlement of approximately €2.5 million was reached (*Irish Times*, 19 December 2020: 4). Two declarations, namely that any findings of wrongdoing made by the tribunal against Joanne, Kathleen, Michael and Edmund Hayes were 'unfounded and incorrect', and that the 'investigation, detention, questioning, arrest, charging and prosecution' of the Hayes siblings between April and October 1984 was unfounded and in breach of their constitutional rights, were secured from the court (High Court Order, 18 December 2020, as attached to Tribunal of Inquiry, 1985). These declarations are now 'permanently attached to the tribunal report in the Oireachtas [parliamentary] library' (*Irish Times*, 19 December 2020: 4). Essentially, this has placed an anachronism in the lens through which current and future historians view the events of 1984/1985, with the (noncontemporaneous) declarations indelibly framing the (contemporaneous) tribunal proceedings.

There were certainly questionable conclusions reached in the tribunal report which were deeply inaccurate and hurtful to Joanne and her siblings. For instance, the tribunal claimed that Joanne had choked her baby and hit him across the head with a bath brush to ensure he was dead (Tribunal of Inquiry, 1985), even though there was no evidence (apart from the false confessions made to the Gardaí) to suggest this had occurred. The report also held that whereas the Hayes family had perjured themselves, the Gardaí had merely engaged in 'a gilding of the lily' (Tribunal of Inquiry, 1985: 61), thus exonerating the latter from any wrongdoing.

At the same time, there were inconsistencies in the evidence Joanne and her siblings gave before the tribunal. They provided different accounts of who was in the house on the night Joanne gave birth and of the subsequent sequence of events (Kerrigan, 1985c; O'Halloran, 1985). Perhaps the greatest discrepancy was in relation to how Joanne's baby's umbilical cord was severed. Joanne claimed that she had broken the cord with her



hands, but the state pathologist told the tribunal that in his view the cord was cut ‘with a scissors, a knife or some such instrument’ (Hayes, 1985: 148). The issue of whether the Gardaí physically abused the Hayes family also remains unclear, with Kerrigan (1985b: 8) speculating that ‘Possibly they thought no one would believe they would sign false confessions without being physically abused’.

Given that the whole truth remained elusive in 1985, it is noteworthy that the High Court could pass such confident declarations correcting the historical narrative so many years later. In this way, both descriptive and judgemental anachronisms comprise core features of the Kerry Babies case. Like Altdorfer’s painting, this development represents the ‘contemporaneity of the noncontemporaneous’ (Koselleck, 2004 [1985]: 90) as the contemporary report and the noncontemporaneous High Court declarations attached to it have become inseparable, both literally and figuratively.

### *The haunting past*

Regarding judgemental anachronisms, De Haan (2015: 796) noted that ‘Stressing the contemporaneity of values and norms will not work, if only because painful episodes in history and uncomfortable historical events defy being laid to rest’. The past has a haunting presence, and the Kerry Babies case certainly defies being laid to rest.

On 16 April 1984, the body of the Cahirciveen baby was buried in the local cemetery. A simple wooden cross was placed on the grave. In February 2004 the wooden cross was replaced with a black marble headstone, inscribed with the words ‘I Am The Kerry Baby, baptised 14-04-1984, named John. And I Forgive’. The grave was vandalised on various occasions, and in July 2004 the headstone was smashed ‘into smithereens’ with a sledgehammer (*Irish Examiner*, 9 July 2004: 3; *The Kerryman*, 24 January 2018: 6). Only when the words ‘I Forgive’ were removed did the attacks cease (*Irish Examiner*, 20 January 2018: 3). It is improbable that nobody in the vicinity knows the identity of whoever was invested enough to keep visiting the grave, strong enough to swing a sledgehammer at the headstone, and angry enough to do so repeatedly.

In January 2018, the Gardaí reopened the investigation, conducting voluntary DNA sampling of local residents in an attempt to identify any surviving relatives of baby John (*Sunday Independent*, 21 January 2018: 4). As of May 2022, the cold case investigation was ongoing. The re-opening of the case means that the past is not yet over – if indeed, it ever can be. When remembering the Kerry Babies, the present cannot afford to be forgotten.

This shadow of the past and its implications for the interplay of history and memory has been fiercely debated (Bevernage, 2011), with Tamm (2013: 465) arguing that the persistence of the past means anachronism ‘is no longer a taboo that the historian must fear but a tool that he can employ for his own benefit’. As aforementioned, historians are traditionally opposed to judgemental anachronisms based on the assumption that so-called ‘modern values’ cannot be fairly applied to the past. But this assumes that the phenomenon in question can be limited to, and contained in, the past, whereas in actuality, history is underpinned by both synchronic (at a particular point in time, without considering antecedents) and diachronic (taking account of evolution

over time) movements. Recognising and embracing anachronisms – both descriptive and judgemental – is an important element of a multidimensional approach to time that nourishes (and complicates) the historical narrative.

## **Mobilisation of memory**

The persistence of the past through memory and mobilisation constitutes a key element of Koselleck's work, and this section discusses two aspects of this theme which can be extrapolated with profit to the case under consideration. The first is that collective memory is never simply about remembering past episodes but can often be deployed in the service of partisan interests (Koselleck, 2002). The second is that there is an ethical dimension which underpins the question of who should be remembered. This surfaces when categories such as 'victim' (and 'offender') are protean, when victimised groups are disunited, or when victims themselves are incapable of (or unwilling to) form part of collective memory (Koselleck, 2018). These issues are explored in relation to the remembering of the Kerry Babies case in the spheres of political and popular culture.

The recurrent mobilisation of this case within the political sphere demonstrates its ongoing state of reinterpretation in accordance with present needs. The further divorced it is from its original context the more polysemous it seems to have become. The term 'Kerry Babies' generated 174 references in parliamentary debates between May 1985 and May 2022 with contributions from right across the political spectrum. The case was cited in expected circumstances in debates surrounding the treatment of persons in Garda custody, the financial costs of tribunals of inquiry, and the neglect of children. However, it also cropped up in unexpected circumstances in debates concerning the lack of job creation in Limerick city, the weaknesses of Irish Shipping Limited and the commercialisation of intellectual property (see Appendix 1 for selected excerpts). As Koselleck (2002: 289) contended, all political and social identifications affixed to past episodes are transitory. A more fluid conception of time which moves beyond chronological demarcation is required to capture this process of continual recreation.

Even within a single debate, the case has been paradoxically invoked. For instance, on 17 January 2018, the Dáil discussed the Report of the Joint Committee on the Eighth Amendment to the Constitution which recommended allowing the Oireachtas to create legislation regarding the termination of pregnancy. Sinn Féin TD Louise O'Reilly referenced the Kerry Babies case to argue that abortion was needed in Ireland to ensure the lives of young mothers were not placed at risk. Independent TD Michael Healy-Rae referred to how the Garda investigation and tribunal of inquiry during the case had been biased in one direction and cautioned that the Joint Committee report similarly relied on skewed evidence. In this way, he invoked Joanne Hayes's victimisation by the Gardaí and the tribunal as a reason to oppose the introduction of abortion.

O'Reilly and Healy-Rae came from very different political traditions – the former a union activist from a republican background representing the urban constituency of Dublin Fingal, the latter a farmer and businessman from rural Kerry. The expressed views were not necessarily personal but also represented those of their constituents (and in O'Reilly's case, political party). Nevertheless, this usage of the Kerry Babies case to

justify polar opposite political positions on abortion demonstrates how it can be loosely reinterpreted (or manipulated) to serve partisan (and moral) agendas.

This reinvention of the Kerry Babies case has occurred in the sphere of popular culture as well as in politics, inspiring fictional works such as *Under the Avalanche* (McCabe, 2011) and *A Swift Pure Cry* (Dowd, 2018 [2006]). McCabe's book captures the complex and interwoven experiences of motherhood (both inside and outside of marriage) of three generations of women in the Cullen family with the Kerry Babies case forming the backdrop to 17-year-old Catherine's pregnancy. Catherine's grandmother Gertrude refers to 'that poor girl in Kerry' and asks 'What is her sin? To have loved, like Mary Magdalene. Or to have been caught?' (McCabe, 2011: 200). Catherine's story ends happily as she raises her daughter with the support of her family and receives an allowance from the father until the child turns 18. A similar happy ending occurs in Dowd's work. Her story is set in the fictional village of Coolbar, Co. Cork in 1984 and follows the story of 15 year-old Michelle 'Shell' Talent, who becomes pregnant and gives birth to a baby girl who dies. The baby is buried in a nearby field, but the Gardaí visit Shell when another body of a baby who died from exposure is discovered in a cave. When the body of Shell's baby is discovered, the Gardaí try to claim she gave birth to twins; a plot line which has clear parallels with the Kerry Babies case. Shell's story, analogous to Catherine's, ends happily when she is cleared of any wrongdoing, and concludes on a buoyant note, exclaiming: 'What joy it was to be, what joy' (Dowd, 2018 [2006]: 342).

Such works, it could be argued, engage in a Disneyfication of the historical narrative by depicting a 'happily ever after' ending, whereas in reality these fictional representations can prevent closure from occurring. In 2006, for instance, Joanne Hayes learned that the Irish Film Board was planning to fund two movies about her experiences. One was based on Mannix Flynn's screenplay *A Twist of Fate*, the other on Nell McCafferty's book *A Woman to Blame*. She pleaded for the films not to be made because they would invade her privacy and have adverse effects on her family, but to no avail (Goc, 2012; *Irish Independent*, 3 June 2006: 33). This highlights the ethical dilemmas posed when victims do not wish to be incorporated into collective memory. Rather than generating closure, it seems the mobilisation of the Kerry Babies case through pop culture has reified the traumas of the past. Its continued usage as a source of inspiration in the creation of pop cultural works – the film *Out of Innocence*, directed by Danny Hiller and based on Joanne's story, was released in 2019 (*Irish Times*, 12 April 2019: 13) – suggests that long ago events constituted a living history in both a performative and literal sense.

## Experience and expectation

Koselleck (2004 [1985]: 259) defined *experience* as 'present past, whose events have been incorporated and can be remembered', whereas *expectation* is 'the future made present; it directs itself to the not-yet, to the nonexperienced, to that which is to be revealed'. He cautioned that spaces of experience and horizons of expectation do not respectively denote a clear-cut 'past' and 'future'. Expectations of the future are to some extent influenced (and limited) by past experiences, and past experiences,

despite having already occurred, can be recalled differently if new hopes or disappointments are retrospectively imposed upon these memories. It is the tension between spaces of experience and horizons of expectation that creates historical time (Koselleck, 2004 [1985]: 257–262) and through exploration of these interlinked categories, the blending of – and overlap between – past, present and future becomes more readily apparent.

This section considers experiences and expectations surrounding an issue which was powerfully invoked by the Kerry Babies case, namely legal protections for suspects and witnesses in criminal investigations and trials. It argues that despite changes in attitudes, discourses and practices, the persistence of systemic factors which facilitate lack of Garda accountability and harrowing cross-examinations on sexual history evidence mean that the experiences and expectations captured during the case have endured.

### *Treatment of suspects*

The investigation into the Kerry Babies case was led by the Investigation Section of the Garda Technical Bureau, commonly known as the Murder Squad. Members of the Murder Squad were referred to as the ‘Heavy Gang’ during the 1970s and 1980s because of their alleged use of ‘brutal interrogation methods’ to extract confessions from suspects (*Irish Times*, 14 February 1977: 1). Joanne outlined her experience of Garda interrogation as follows:

They wanted the ‘truth’, the version that would fill the gaps in the scenario they had created. . . I cried out that I couldn’t help; they decided that I wouldn’t, and the pressure became more intense. I held out until I could take no more, then I delivered the statement that they had been after all along (Hayes, 1985: 46).

The interrogation techniques used by the Gardaí, according to the Hayes family, led to unbearable pressure to confess, despite their innocence. It seemed that adequate legal protections for them – like anyone else under suspicion of a crime at the time – were conspicuously absent.

The experiences of the Hayes family generated horizons of expectation surrounding safeguards for suspects in Garda custody and the introduction of effective mechanisms for complaints against the police. The antecedents of these horizons of expectation, however, predated the Kerry Babies case. The deaths of 23 people in Garda custody between 1975 and 1983 (many by suicide) had generated significant concern over interrogation techniques, and in October 1977 a committee was established under Mr Justice Barra O’Briain to consider safeguards for suspects in custody (Conway, 2014; Kerrigan, 1984). The Criminal Justice Act 1984 legislated for some of the recommendations made in the O’Briain report, but it also extended the powers of the Gardaí to arrest suspects without charge. To assuage concerns raised by the latter provision, the Minister for Justice promised to introduce an independent procedure to investigate complaints made against the Gardaí (Conway and Walsh, 2011).

The experiences of the Hayes family further ratcheted up the political pressure to introduce reforms. This led to the creation of the Garda Síochána Complaints Board (GSCB) in 1986. Though the GSCB was nominally independent, Gardaí conducted investigations into alleged wrongdoing and the Board simply supervised this process. The deficiencies of the GSCB led to a Garda Síochána Ombudsman Commission (GSOC) being established. GSOC was also criticised as seriously deficient and little more than ‘a sheep in wolf’s clothing’ for its tendency to engage in external review and supervision rather than actually carry out independent investigations (Conway, 2008: 114). Despite these limitations, GSOC (when coupled with related initiatives such as joint policing committees) nevertheless represented ‘the most significant overhaul of policing structures since the foundation of the state’ (Mulcahy, 2006: 38), which suggests that a degree of success (albeit limited) was achieved in trying to enhance accountability mechanisms.

Subsequent events demonstrated that the horizons of expectation generated in the 1980s remained elusive. The Morris Tribunal into Garda corruption and misconduct in Donegal, established in 2002, resulted in eight reports over six years which were ‘highly damning of the Gardaí, at both rank and file and senior level’ (Conway and Walsh, 2011: 247). Mr Justice Morris criticised the ‘blue wall of silence’ he faced which led to Gardaí telling a ‘tissue of lies’ to the tribunal (p.247). The *Irish Times* (14 December 2020: 13) reflected that ‘Had the [Kerry Babies] Tribunal taken the gardaí to task properly, perhaps some of the scandals involving garda misconduct in subsequent decades might have been avoided’. The horizons of expectation generated following the Kerry Babies case certainly did not bear fruit regarding Garda treatment of suspects and effective mechanisms for complaint.

In April 2021, a Policing, Security and Community Safety Bill was introduced by Minister for Justice Helen McEntee to enhance independent oversight of the force. The Bill seeks to expand the powers of GSOC and create a new Policing and Community Safety Authority with the power to carry out unannounced inspections of the Gardaí. Time will tell if these measures prove successful; a daunting task lies ahead as over four decades’ worth of expectations rest upon these reforms.

### *Sexual violence*

Although the terms of reference of the tribunal were to determine the circumstances leading to criminal charges being brought against the Hayes family, and to investigate allegations of mistreatment against them which resulted in false confessions being given, the tribunal morphed into an inquisition into Joanne’s sexual behaviour. Gardaí employed a theory of heteropaternal superfecundation to try and prove that Joanne was the mother of the Cahirciveen baby (despite forensic evidence showing the Cahirciveen baby had blood group A, whereas Joanne Hayes and Jeremiah Locke had blood group O). They tried to claim that Joanne had been impregnated by two different men within 24 hours, one of whom had blood group A, and that she gave birth to twins which had different blood groups, one of whom was cast out to sea and the other hidden on the family farm.

To prove this highly unlikely theory, counsel for the Gardaí attempted to depict Joanne as sexually promiscuous and asked invasive and irrelevant questions about her sexual history, contraceptive practices and menstrual cycle. Joanne spent five days on the stand being cross-examined, was asked 2,216 questions, and had to be sedated on one occasion because she was so distraught by the intrusive line of questioning (Conway, 2017). She described how the legal process allowed counsel 'to denigrate and degrade me' (Hayes, 1985: 166), which indicated a serious deficiency in protections available to witnesses undergoing cross-examination.

Parallels were contemporaneously drawn between Joanne's cross-examination and the courtroom experience of rape victims. The Oireachtas Committee on Women's Rights described Joanne's cross-examination as 'harrowing and quite horrific' and called on the Minister for Justice to intervene in the tribunal because of the 'insensitive' nature of the questioning. The committee's chair posited that the Kerry Babies case demonstrated a worrying attitude towards female sexuality and expressed concern that rape victims were similarly undergoing aggressive cross-examination (*Irish Times*, 23 January 1985: 1).

Marianne Heron of the *Irish Independent* wrote that: 'The practice whereby barristers seek to bully, discredit or even psychologically break witnesses for the other side is a daily routine' (31 January 1985: 11). However, she reassured her readers that under s.3(2)(b) of the Criminal Law (Rape) Act 1981, if the defence wished to ask the complainant questions about her sexual history, an application had to be made to a judge in the absence of a jury. A 2009 study found that sexual history evidence was permitted by judges in 13 of 35 cases, and that questioning surrounding sexual behaviour occurred in 24 of them, suggesting the legislative provisions have not offered much protection to witnesses (Hanly et al., 2009).

The parallels between Joanne's plight and that of rape victims led to expectations of legal reform surrounding interrogation and cross-examination. The *Irish Times* called for 'a system of investigation which balances the public's right to information with the individual's right to privacy', and 'a more humane and sensitive instrument of law to deal with private lives' (24 January 1985: 11). The West Cork Women's Group expressed hope that the 'growing awareness of the male assumed rights over women, their bodies and emotions' would eventually lead to the creation of a more gender-equal social order (McKeown, 1985). Yet in spite of various positive developments surrounding the treatment of victims since the 1990s (see Cusack, 2020), the courtroom experiences of adults have remained stubbornly unchanged.

A Working Group was established in 2018 to review the law surrounding the treatment of vulnerable witnesses in sexual offences cases. Its final report deemed that s.3(2)(b) of the Criminal Law (Rape) Act 1981 was an adequate safeguard and did not recommend any further changes (Working Group, 2020). In essence, it upheld the system of cross-examination of female complainants which had existed since the 1980s. Given this dearth of procedural change, the ordeal suffered by witnesses such as Joanne Hayes during cross-examination continue to constitute current spaces of experience. The continual resurfacing of the Kerry Babies case is



partially a result of its remarkably enduring resonances within the Irish criminal justice system.

## Conclusion

Just as the various sections of this article comprise distinctive if complementary layers of the Kerry Babies case, so too are the streams of past, present and future overlapping, fluid and intertwined. This paper has attempted to contribute to historiographical, theoretical and practical perspectives. From a historiographical perspective, we have argued that although the literature surrounding the Kerry Babies case is valuable it collectively (and sometimes problematically) relied on a chronological approach to historical time. From a theoretical perspective, we have contended that by changing the lens through which temporality is considered, more penetrating insights into the interplay between memory, history and criminal justice may accrue. A Koselleckian approach which captures the multidimensional nature of time through discussion of anachronisms, the mobilisation of memory, and categories of experience and expectation, is particularly well-positioned to capture such nuances. Finally, from a practical perspective, we hope that the paper has contributed to an enhanced understanding of issues such as child-killing, police interrogation techniques and sexual politics within the criminal justice process.

The reverberations of the Kerry Babies case are perennial. In September 2021, the remains of Baby John were exhumed by Gardaí from Holy Cross Cemetery in Cahirciveen to extract further evidence. Modern advances in DNA technology may finally assist in identifying the mother of the dead infant, and in determining the precise circumstances that led to his violent death (*Irish Times*, 15 September 2021: 4). With such recent developments in mind, this article is inevitably incomplete. The story of the Kerry Babies is not over, and further developments may prompt future reappraisals. This emphasises the fragmentary nature of history, not merely due to its methodology which relies primarily on surviving source material, but because of the inherent conceptual limitations in trying to provide a snapshot of an episode underpinned by temporal fluidity and multidimensionality. We believe that striving to capture the complexities of such an episode and its underlying temporal dynamics is a worthwhile exercise despite the associated challenges.

This article echoes the calls of historical criminologists for researchers to adopt a more sustained and theoretically informed engagement with time, which has implications for the role of the historian when delving into matters of criminal justice. It necessitates a move beyond a conception of the historian as a conduit through which the historical 'truth' can be unearthed via detailed excavation of primary sources. Rather, the Kerry Babies case demonstrates that the existence of a singular truth, though professed and laid claim to by many actors in the spheres of law, politics, popular culture and civil society, is fanciful. Indeed, it may be argued that the polysemous nature of the case renders a heterogeneous temporality inevitable. Cases which refuse to be laid to rest entail a continuous process of creation and reimagining, and the Koselleckian approach calls for



the 'contemporaneity of the noncontemporaneous' to be embraced in order to shed light upon the resonances and dissonances of streams of historical time.

There is one final point to note. Through its application of Koselleckian theory, this article has not sought to advance a thesis in the conventional sense. Rather, its aim is broader and, we would argue, more important than that. Our purpose has been to stimulate discussion on the interplay of memory, history and criminal justice in relation to an episode that has captured the public imagination in Ireland for almost four decades. This case has exerted a profound and enduring effect on the criminal justice system, and it is our contention that a Koselleckian approach serves to generate an enhanced understanding of its parameters and effects. Given its wide-ranging legacies and continued repercussions, the Kerry Babies case cannot simply be confined and contained to the past. Its haunting presence does not allow for such a luxury.

### Acknowledgements

We are obliged to Lynsey Black and Dave Churchill for their comments on a previous draft of this paper. We would also like to thank the two anonymous peer reviewers whose suggestions helped to sharpen our focus.

### Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

### Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This work was supported by the Irish Research Council (grant number GOIPG/2019/2366).

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## Appendix I

### Selected references to ‘Kerry Babies’ in Oireachtas [parliamentary] debates, 1985 – 2022

Date	Chamber/ committee	Reference	Topic of discussion	Quotes
28 May 1985	Dáil	Vol.358 Col.2443	Private Members’ Business–Limerick Industries Project: Motion.	“For a paltry £1 million, less than the cost of the Kerry baby tribunal, that project would have been based in Limerick and, ultimately, 800 jobs created.” [Willie O’Dea, <i>Fianna Fáil</i> ]
26 June 1985	Dáil	Vol.359 Col.2155	Private Members’ Business–Irish Shipping Limited: Motion (Resumed).	“Recently we spent £1 million on the so-called Kerry babies inquiry which was set up at the behest of many hysterical females and the media, all of it intended only to humiliate the Garda. I suggest the taxpayers’ money would have been better spent if it had been used to find out precisely what went wrong in Irish Shipping.” [Alice Glenn, <i>Fine Gael</i> ]
27 May 1986	Dáil	Vol.367 Col.233	Private Members’ Business–White Paper on Treatment of Persons in Custody in Garda Stations: Motion.	“Since the time of the Ó Briain report the need for such safeguards has been reemphasised by the death of Peter Matthews in Shercock Garda station, the Kerry babies case, with which everyone is familiar, and the Rory Buckley Pro-Life Amendment questioning.” [Michael Woods, <i>Fianna Fáil</i> ]
5 November 1986	Seanad	Vol.114 Cols.1306-1307	Status of Children Bill, 1986: Committee Stage.	“What is the objection to having, subject to the direction of the court, a blood sample taken from a fugitive father? . . . There are more sophisticated blood tests that were mentioned during the Kerry Babies Tribunal which can with great certainty determine who the parents are.” [Seán O’Leary, <i>Fine Gael</i> ]
1 March 1990	Dáil	Vol.396 Col.1270	Criminal Justice (Forensic Evidence) Bill, 1989 [Seanad]: Second Stage.	“It should be a thing of the past that a police officer would put samples into the locker in the police station or bring them home or, like the unfortunate Professor Harbison, given the circumstances and pressures under which he has to work, carry them around in his motor car for days or even weeks, as emerged in the Kerry babies inquiry.” [Patrick McCartan, <i>Workers Party</i> ]
29 May 1991	Seanad	Vol.129 Col.392	Tribunal of Inquiry into Beef Processing Industry: Motion.	“In the case of the Kerry Babies Tribunal there was almost a witchhunt against members of the Garda Síochána. We do not want to see this happen with regard to this inquiry.” [Liam Cosgrave, <i>Fine Gael</i> ]
9 December 1994	Dáil	Vol.447 Col.961	Select Committee on Legislation and Security of Dáil Éireann (Privilege and Immunity) Bill, 1994: Second Stage.	“We had enough examples – the tribunal of inquiry into the Whiddy Island disaster and the Kerry Babies case. Does anyone remember what these cases were about at this stage? However, they do remember the cost. . . We should look ahead and ensure that we develop our procedures in such a way that they will not lead to such appalling costs.” [Jim O’Keeffe, <i>Fine Gael</i> ]
27 May 2009	Seanad	Vol.195 Col.767	Monageer Report: Motion.	“In recent years we have had many reports on the neglect of children, not just the Ryan report. . . we had the Kilkenny incest case, the Kerry babies case, the Kelly Fitzgerald case, the Madonna House report, the McColgan report, the McCoy report, the Hynes report and now the Monageer report. . . the risk to children remains and there is an absence of urgency in putting in place the necessary measures to ensure our children are protected and potential tragedy averted.” [Frances Fitzgerald, <i>Fine Gael</i> ]

(Continued)

## Appendix I. (Continued)

Date	Chamber/ committee	Reference	Topic of discussion	Quotes
9 March 2017	Dáil	Vol.942 No.2	Commission of Investigation Announcement on Tuam Mother and Baby Home: Statements	"The Catholic Church stands in the glare of exposure and investigation yet again. It only takes good men to do nothing for evil to thrive and that is exactly what happened here. The State has also very serious questions to answer in this regard in that it sponsored these institutions. When we look back at the Kerry babies controversy, this is the Kerry babies multiplied by hundreds upon hundreds upon hundreds." <i>[Michael Harty, Independent]</i>
17 January 2018	Dáil	Vol.963 No.6	Priority Questions–State Pension (Contributory)	"Although these band changes [for contributory pensions] affect both men and women, there are particular measures of discrimination affecting women who raised their families prior to 1994. . .on a daily basis we are faced with a barrage of elements of discrimination in this society, the latest being the revisiting of the debacle that Joanne Hayes faced in 1984 because of the Kerry babies issue." <i>[Brid Smith, Solidarity-People Before Profit]</i>
17 January 2018	Dáil	Vol.963 No.6	Report of the Joint Committee on the Eighth Amendment of the Constitution: Statements	"I remember the Kerry babies case well. I remember the case of Ann Lovett. I remember how upset my parents were about the idea that this young woman died on her own. . .We have to grasp the opportunity we now have to ensure this will not happen again." <i>[Louise O'Reilly, Sinn Féin]</i> "We have to be fair about the evidence given. It was the same as the Kerry babies case and the tribunal held at the time. When people look back at the transcript of the eighth amendment committee, they will have to admit it was weighted one way and not the other." <i>[Michael Healy Rae, Independent]</i>
25 January 2018	Committee of Public Accounts	-	Business of Committee (Commercialisation of Intellectual Property)	"Lately the Kerry babies tribunal's findings have been in the spotlight. . .The report into that case was never discussed in the Dáil in the 1980s. We are now in the 21st century and have moved to a point where we actually discuss things but it is considered taboo to talk about this matter of intellectual property. There is an attitude of "we know best" and "they are anti commercialisation of intellectual property", with no questions allowed. Nothing has changed since the Kerry babies tribunal, just the subject." <i>[Catherine Connolly, Independents 4 Change]</i>
25 January 2022	Dáil	Vol. 1016 No. 6	Violence against Women: Statements	"The Kerry babies case is not recent news but the structural violence and mindset that informed that case is still very much around. It is something of which we must be conscious and one of the ways to address it is certainly to get more women elected and in here talking about such matters so it is not just me and my male colleagues doing it." <i>[Patrick Costello, Green Party]</i>