

**Review of W.E. Vaughan, *Murder Trials in Ireland 1836-1914*
(Dublin: Four Courts Press, 2009)**

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Murder trials often represent the criminal justice system at its most sensational, emotive, widely-reported and melodramatic; this was no less true in the nineteenth century than in the twenty-first. In this comprehensive overview of the procedures involved in the nineteenth-century murder trial, W.E. Vaughan illustrates the complexity of nineteenth-century criminal procedure. As he points out, there has been to date no definitive examination of the working of the criminal trial process in nineteenth-century Ireland. *Murder Trials in Ireland* goes a considerable way towards remedying this defect by considering the criminal process through the lens of the murder trial. Vaughan cites a number of justifications for focusing on such trials. Firstly, as is the case today, they represented the working of the criminal justice system “at its most elaborate, careful, and strained.”¹ Secondly, murder trials are well documented in the Convict Reference Files in the National Archive of Ireland. Thirdly, they represented a considerable proportion of reported criminal cases, and fourthly, they provide the limitation in scope necessary for such a pioneering study of the Irish criminal justice system.²

Vaughan also justifies his choice of 1836 and 1914 as the temporal parameters for the study. The year 1836 was a year of reform of the criminal justice system, with changes to the organisation of the police and magistracy and the passing of the *Prisoners' Counsel Act 1836*.³ The year 1836 also saw the beginning of the Convict Reference Files, one of the primary sources used for this work. The year 1914 serves as a good end-point when considering the “long nineteenth century;” though Vaughan notes that 1921 could just as easily be chosen. One reason for preferring 1914 in this instance is that there were few murder trials during the years of the Great War.

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¹ W.E. Vaughan, *Murder Trials in Ireland 1836-1914* (Dublin: Four Courts Press, 2009) at i [hereinafter Vaughan, *Murder Trials*].

² *Ibid.* at Chapter 1.

³ *Prisoners' Counsel Act, 1836*, 6 & 7 Wm. 4, ch. 114.

This study is limited to what could be described as “run-of-the-mill” murder prosecutions, and does not make detailed forays into infanticide, insanity defences or cases where charges were reduced from murder to lesser offences. The cases examined in this book arose from domestic disputes, lovers’ quarrels, family feuds, drunken brawls, rivalries, disputes over property and unexplained violence – murder prosecutions in Ireland rarely arose from political disturbances. The structure of *Murder Trials in Ireland* is a logical progression through the various stages of the trial process, from apprehending the suspect through to the execution of the sentence, with detailed consideration afforded to the various elements of the trial itself.

Murder trials usually began with the discovery of a body.⁴ The constabulary were under an obligation to inform the coroner of “any case of sudden death, or of death attended with suspicious circumstances,”⁵ and the coroner could order that the body be brought to a nearby public house or similar venue for the purpose of conducting an inquest. He would empanel a jury of between twelve and twenty-three persons to examine the body and listen to witnesses’ testimony, before reaching a verdict. The verdict – which could be one of murder, manslaughter, suicide, justifiable homicide, or killing by an irrational agent – had to be agreed by at least twelve jurors. Coroners’ roles and duties overlapped somewhat with those of police and the magistracy, and were the subject of frequent legislative reform in the period under consideration.

After a suspect was arrested, usually by a member of the Royal Irish Constabulary or the Dublin Metropolitan Police, he was brought before a magistrate.⁶ The constabulary usually presented the prosecution evidence at these committal proceedings, and the suspect could cross-examine witnesses. It was not until relatively late in the period that the suspect could call his own witnesses.

The magistrate could commit a suspect for trial if there was a *prima facie* case against him, discharge him, or release him on bail. If committed for trial, this usually took place at the spring, summer or (after 1877) winter assizes.⁷ In Dublin, the assizes, known as the Dublin Commission, took place six times a year. Whilst in England, criminal prosecutions

⁴ Vaughan, *Murder Trials* at Chapter 2.

⁵ *Coroners (Ireland) Act, 1846*, 9 & 10 Vic., ch. 37, s. 22.

⁶ Vaughan, *Murder Trials* at Chapter 3.

⁷ *Winter Assize Act, 1876*, 39 & 40 Vic., ch. 57.

were by and large brought by private individuals,⁸ in Ireland from an early stage all prosecutions came under the direct personal control and supervision of the Irish Attorney General.⁹ The Attorney General's agents were the Crown solicitors, who reported directly to him after the assizes. They prepared the cases for the Crown counsel, who acted on behalf of the Attorney General in most murder trials. Crown counsel enjoyed a range of powers, and could request the postponement of trials or changes of venue, make concluding speeches at the trial or enter a *nolle prosequi*.

The assizes was formally opened by the clerk of the Crown reading out the judges' commission. The clerk then swore in the grand jury, whose function was similar to that of the magistrate at the committal stage. There were between twelve and twenty-three grand jurors, who had been chosen by the sheriff from among the county's resident freeholders, or landed gentry. The grand jury had both local government and criminal justice functions; in the criminal sphere, they decided whether there was sufficient evidence to merit putting the prisoner forward for trial before a petty jury. If, having examined the Crown's witnesses, at least twelve of the grand jurors considered that there was a good *prima facie* case, they found a true bill against the prisoner.

The prisoner was brought to the dock and the indictment was read to him; this was called the arraignment.¹⁰ The indictment could contain several counts, and could include a number of prisoners; similarly, a number of indictments could be brought before the same prisoner or number of prisoners. Except in cases of treason, prisoners were not entitled to a copy of the indictment. The prisoner was asked how he pleaded; he could plead guilty or not guilty, or he could object to the indictment by means of either a motion to quash it or by a demurrer. He could also enter a plea in abatement, which was either a challenge to the composition of the grand jury or an objection to the indictment itself.

The next and most complicated part of the trial was the empanelment of the petty jury.¹¹ This could take up to a couple of days, with dozens or even hundreds of persons summoned, attracting considerable publicity. Allegations of "jury packing" by sheriffs or Crown solicitors were common in Ireland – this was the supposed "packing" of juries with

⁸ See J.H. Langbein, "The Origins of Public Prosecution and Common Law" (1973) 17 *American Journal of Legal History* 313.

⁹ See J. McEldowney, "Crown Prosecutions in Nineteenth-Century Ireland" in D. Hay & F. Snyder, *Policing and Prosecution in Britain 1750-1850* (Oxford: Clarendon Press, 1989) at 428.

¹⁰ Vaughan, *Murder Trials* at Chapter 3.

¹¹ *Ibid.* at Chapter 4.

men sympathetic to the Crown or more likely to convict. Such allegations were more common in cases of a political hue, rather than murder trials. Legislation specified the property qualifications necessary for those who sat on petty juries, and while this varied throughout the century, generally speaking they were male property owners of between twenty-one and sixty to seventy years of age. Under the *Juries (Ireland) Act 1833*¹² jurors were chosen by the sheriff from the county jurors' book, and he was to select between 36 and 60 names. Under later legislation, sheriffs were to call as many jurors as they deemed necessary.¹³ The same legislation also removed much of the sheriff's discretion in forming the panel, and introduced a system of alphabetical rotation.¹⁴

The prisoner had the right to challenge "the array" – the whole list of jurors summoned – on the grounds that the sheriff had not been impartial in empanelling it. He could also challenge "the polls," or the individual jurors. He could challenge up to twenty jurors peremptorily, or an unlimited number for cause. Analogous to the prisoner's right to challenge peremptorily was the Crown's right to order an unlimited number of jurors to "stand aside."¹⁵ In theory, this meant that jurors were to "stand aside" until after the first calling-over of the panel, and if the panel was called over a second time, the Crown had to show cause against them, or else they were sworn on the jury. In many cases however, the panel was long enough that it was not called over a second time. If a sufficient number of jurors answered to their names on the first calling, there was no need to revisit the "stand-asides".

Once the jurors had been sworn in, they were charged by the clerk of the Crown and the prisoner was given in charge. At this point the trial could be considered to have formally begun.¹⁶ Generally the case opened with the senior Crown counsel making an opening speech, followed by the calling of Crown witnesses. After the Crown had made out its case, the prisoner's defence began.¹⁷ Prisoners tended to have only one junior counsel at their disposal, and as early as the 1830s judges could assign counsel for indigent prisoners. The *Prisoners' Counsel Act 1836*¹⁸ allowed the defendant's counsel to make a speech after the last prosecution witness had been called, but this was interpreted as replacing the right for

¹² *Juries (Ireland) Act, 1833*, 3 & 4 Wm. 4, ch. 91, s. 12.

¹³ *Juries Act (Ireland), 1871*, 34 & 35 Vic., ch. 65, s. 18.

¹⁴ *Juries Act (Ireland), 1871*, 34 & 35 Vic., ch. 65, s. 19.

¹⁵ Crown counsel could also challenge an unlimited number of jurors for cause.

¹⁶ Vaughan, *Murder Trials* at Chapter 5.

¹⁷ *Ibid.* at Chapter 6.

¹⁸ *Prisoners' Counsel Act, 1836*, 6 & 7 Wm. 4, ch. 114.

prisoners themselves to address the jury. Prisoners appear to have called much fewer witnesses than prosecutors – an average of two compared with fifteen, according to Vaughan.¹⁹

Relevant evidence was given on oath by competent witnesses, and the restrictions on hearsay, opinion evidence, similar fact evidence, character evidence would be familiar to twenty-first century lawyers, though the evidential rules have evolved somewhat. Vaughan devotes particular attention to confession evidence and statements made by approvers, or accomplices.²⁰ Similarly, cross-examination involved tactics aimed at the discrediting of witnesses which would be familiar to many modern practitioners.

After the Crown counsel had made his second speech to the jury at the conclusion of the evidence, the judge then addressed the jury.²¹ This could be quite a lengthy speech, summarising the evidence which had been presented and explaining the relevant law, and often the judge would indicate to the jury whether they ought to acquit or convict. The jury was then given an issue paper, and could either deliberate in their box in the courtroom, or retire to the jury room.²² Their verdict had to be unanimous, and until relatively late in the century, they were to be deprived of food, fire, water or candle until agreement was reached. In a situation where a jury was deadlocked, without hope of agreement, there was in certain circumstances the possibility of discharging them and ordering a retrial. If the jury did manage to reach a verdict, whether general or special, this was given in open court in the presence of the prisoner.

Sentencing took place after the jury had delivered its verdict.²³ Sometimes the judge pronounced the sentence immediately after the verdict, while in other cases it was postponed. Murder was a capital offence, and considerable solemnity was afforded to the pronouncement of sentence; silence was ordered in the courtroom, the judge donned a black cap, and the prisoner was asked whether he had anything to say. The judge could simply record sentence of death where he was of the view that the circumstances of the case meant that the prisoner was deserving of mercy. In such instances, although the sentence of death

¹⁹ Vaughan, *Murder Trials* at 241.

²⁰ *Ibid.* at Chapter 5.

²¹ *Ibid.* at Chapter 7.

²² *Ibid.* at Chapter 8.

²³ *Ibid.* at Chapter 9.

was recorded, it was not actually imposed, and was substituted with a lesser sentence, such as transportation.

Even after sentence had been passed, the prisoner could petition the Lord Lieutenant (the Crown's representative in Ireland) for a pardon, a reprieve or a commutation of his sentence.²⁴ Alternatively, the Attorney General could issue a writ of error enabling the defendant to take his case before the Court of Queen's Bench (or the Queen's Bench Division), or the judge might reserve the case for consideration by the twelve common law judges or (after 1848) the Court for Crown Cases Reserved.²⁵ Most of those convicted of murder petitioned the Lord Lieutenant to exercise the royal prerogative of mercy, and he had the discretion to issue a warrant for a commutation of sentence, a reprieve or a pardon.²⁶ Vaughan devotes some consideration to the options facing the Lord Lieutenant, and the manner in which his discretion was exercised.

In the event that the death sentence was not commuted or reprieved, a warrant authorising the sheriff to carry out the hanging was signed by the clerk of the crown on behalf of the sentencing judge.²⁷ The sheriff was obliged to see that the sentence was properly executed, and in practice it was usually the sub-sheriff who executed the warrant. Hangings were rare, and procedure appears to have varied between counties. The condemned prisoner, dressed in a shroud, often made a speech before being "launched into eternity."²⁸ Until 1868 hangings were in public, but from that point on they were carried out in the gaol where the prisoner was imprisoned at the time of his conviction, usually in the assize town.²⁹ Vaughan's discussion of the death penalty brings to a dramatic close the story of the nineteenth-century murder trial.

Vaughan concludes by making a number of observations on the Irish criminal justice system generally. Firstly, he points out that while the appeal system was both limited and erratic, both the Court of Queen's Bench and the Court for Crown Cases Reserved were "remarkable"³⁰ for their independence. Secondly, he notes the importance of pre-trial procedures for determining how many suspected murder cases actually went on to trial.

²⁴ *Ibid.*

²⁵ *The Crown Cases Act, 1848*, 11 & 12 Vic., ch. 78.

²⁶ Vaughan, *Murder Trials* at Chapter 10.

²⁷ *Ibid.* at Chapter 11.

²⁸ *Ibid.* at 344.

²⁹ *Capital Punishment (Amendment) Act, 1868*, 31 & 32 Vic., ch. 24.

³⁰ Vaughan, *Murder Trials in Ireland* at 371.

Thirdly, he observes that “the laws of evidence and the silence of the prisoner were so artificial that their combined existence now seems an almost eccentric interlude in the history of legal procedure.”³¹ He notes that the laws of evidence gave judges “a most remarkable means of controlling the flow of information.”³² Arguably, the continued use of jury trials for serious criminal offences in the twenty-first century means that the judge’s role in this regard has scarcely changed. Most of the modern law of evidence has developed as a means of regulating the information heard by juries. This brings us to Vaughan’s final conclusion, which is that the importance of juries in the nineteenth-century criminal system cannot be exaggerated. The petty jury enjoyed considerable discretion as to the verdict returned, and was ultimately charged with determining the guilt or innocence of the prisoner.

In conclusion, *Murder Trials in Ireland* might be criticised for being primarily descriptive rather than analytical, but this reviewer would counter that the full story of the nineteenth-century Irish criminal trial is one that remains to be told. Vaughan’s book represents a welcome addition to the growing body of work on this subject;³³ equivalent

³¹ *Ibid.* at 372.

³² *Ibid.*

³³ As a sample of the work in this area, see for example I. Bridgeman, “The Constabulary and the Criminal Justice System in Nineteenth-Century Ireland” in I. O’Donnell and F. McAuley, eds., *Criminal Justice History: Themes and Controversies from Pre-Independence Ireland* (Dublin: Four Courts Press, 2003); R.B. McDowell, “The Irish Courts of Law, 1801-1914” (1957) 10(40) *Irish Historical Studies* 363; J. McEldowney & P. O’Higgins, eds., *The Common Law Tradition: Essays in Irish Legal History* (Dublin: Irish Academic Press, 1990); D. Hogan, *The Legal Profession in Ireland 1789-1922* (Dublin: The Incorporated Law Society of Ireland, 1989); R. Brown Blake, “‘A Delusion, a Mockery and a Snare’: Array Challenges and Jury Selection in Nineteenth-Century Ireland, 1800-1850” (2004) 39(1) *Canadian Journal of Legal History* 1; P. Bonsall, *The Irish RMs: The Resident Magistrates in the British Administration of Ireland* (Dublin: Four Courts Press, 1997); J.C. Brady, “Legal Developments, 1801-79” in W.E. Vaughan, ed., *A New History of Ireland, Volume V, Ireland Under the Union I, 1801-70* (Oxford: Oxford University Press, 1989); D. Greer, “A Security Against Illegality? The Reservation of Crown Cases in Nineteenth-Century Ireland” in N. Dawson, ed., *Reflections on Law and History: Irish Legal History Society Discourses and Other Papers, 2000-2005* (Dublin: Four Courts Press, 2006) [hereinafter Dawson, *Reflections on Law and History*]; D. McCabe, “Open Court: Law and the Expansion of Magisterial Jurisdiction at Petty Sessions in Nineteenth-Century Ireland” in Dawson, *Reflections on Law and History*; M. Finnane, “Irish Crime without the Outrage: The Statistics of Criminal Justice in the Later Nineteenth Century” in Dawson, *Reflections on Law and History*; D.S. Johnson, “Trial by Jury in Ireland 1860-1914” (1996) 17(3) *Journal of Legal History* 270; D. Hogan & W.N. Osbrough, eds., *Brehons, Serjeants and Attorneys: Studies in the History of the Irish Legal Profession* (Dublin: Four Courts Press, 2005); D. McCabe, “Magistrates, Peasants and the Petty Sessions Courts: Mayo, 1823-50” (1985) 5(1) *Cathair na Mart* 45; J.F. McEldowney, “‘Stand By for the Crown’: An Historical Analysis” (1979) *Criminal Law Review* 272; J.F. McEldowney, “Policing and the Administration of Justice in Nineteenth-Century Ireland” in C. Emsley & B. Weinberger, eds., *Policing Western Europe: Politics, Professionalism and Public Order, 1850-1940* (London: Greenwood Publishing, 1991); E. Malcolm, “Investigating that ‘Machinery of Murder’: Irish Detectives and Agrarian Outrages, 1847-79” (2002) 6(3) *New Hibernia Review* 73; D.S. Johnson, “The Trials of Sam Gray: Monaghan Politics and Nineteenth Century Irish Criminal Procedure” (1985) 20 *Irish Jurist* 109; N. Howlin, “Controlling Jury Composition in Nineteenth-Century Ireland” (2009) 30(3) *Journal of Legal History* 227; R.B. McDowell, *The Irish Administration 1801-1914* (London: Routledge and K. Paul, 1964); R. McMahon, “The Court of Petty Sessions and Society in Pre-Famine Galway” in R. Gillespie, ed., *The Remaking of Modern*

English systems and procedures have long been the subject of scholarship.³⁴ One possible criticism of the book is that it could do more to highlight instances where English and Irish law and practice diverged; it is not always clear whether apparent anomalies or procedural quirks were uniquely Irish.

Vaughan elucidates various esoteric elements of criminal procedure, giving numerous illustrative examples along the way. One of the book's strengths is that the author describes in detail the roles played by the various actors in the nineteenth-century criminal justice system – coroners, stipendiary and ordinary magistrates, members of the Royal Irish Constabulary and the Dublin Metropolitan Police, assize judges, clerks of the Crown, clerks of the peace, Crown solicitors and Crown counsel, defence counsel, sheriffs, coroners' jurors, grand jurors, petty jurors, and the Lord Lieutenant. Vaughan's clear writing style and rhetorical flourishes do much to bring these characters to life.

Ireland 1750-1950: Beckett Prize Essays in Irish History (Dublin: Four Courts Press, 2004); R. McMahon, "The Madness of Party: Sectarian Homicide in Ireland 1801-1850" (2007) 11(1) *Crime History and Societies* 83.

³⁴ Notable works include D. Bentley, *English Criminal Justice in the Nineteenth Century* (London: Hambledon Press, 1998); J. Langbein, *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press, 2003); J.S. Cockburn, *A History of English Assizes* (Cambridge: Cambridge University Press, 1972); R. Chadwick, *Bureaucratic Mercy: The Home Office and the Treatment of Capital Cases in Victorian Britain* (New York and London: Garland Publishing, 1992); C. Emsley, *Crime and Society in England, 1750-1900*, 3rd ed. (Harlow: Longman, 2007); V.A.C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (Oxford: Oxford University Press, 1994); D. Hay & F. Snyder, *Policing and Prosecution in Britain 1750-1850* (Oxford: Clarendon Press, 1989); C. Hanly, "The Decline of Civil Jury Trial in Nineteenth-Century England" 26(3) *Journal of Legal History* 253; J.H. Baker, *An Introduction to English Legal History*, 4th ed. (Oxford: Oxford University Press, 2002).