

## The Criminalization of Illness

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In the early 1900s Mary Mallon was detained by New York City authorities under the health provisions of the City Charter that allowed them to take measures to prevent or contain disease. It was believed that Mary, an Irish immigrant and servant who worked as a cook in several households, had spread typhoid bacilli in the families she was employed by and as a result people contracted typhoid fever and died. Whether she ever had typhoid or not is in question as tests by the city laboratories had positive results and the tests she had done herself by outside laboratories had negative results. Whether she was cause or coincidence was never determined.

However, she was forcibly detained at a New York hospital where she was kept in a cottage and allowed movement only within the hospital grounds. She was detained for many years until she finally obtained her release on a promise never to work as a cook again. But circumstances forced her to return to that occupation and again an outbreak of typhoid took place in 1915 at the hospital at which she worked. Several people died. She was again detained and died in detention 23 years later.

Mary never herself became ill with typhoid. She insisted she did not have it. Yet, the New York authorities felt she was a threat to public health and removed her from society. The injustice inflicted on her is revealed by the fact that New York suffered several typhoid outbreaks during the period and there were others who were determined to be the source of typhoid in outbreaks not connected with the presence of Mary. Yet, no one else was detained as she was and many believed at the time, as she did, that she was really being detained for being Irish, immigrant, female, working class, and one who would not obey the “rules”.

Yet, no matter how unjust the fate of Mary was, it is remarkable that no one ever thought of using the criminal law to deter her and to punish her. It never crossed any one’s mind that a woman, who in their minds, was continually and knowingly spreading the typhoid bacilli, reckless of its effect and consequences, even death, should be treated as a criminal.

It was seen as a medical problem, not as a criminal problem. It was seen as a societal problem, not as a moral problem. The goal was the protection of the public health, not the moral condemnation of a citizen and her punishment by the state.

But, we have in the past 30 years, concerning hiv, slipped into a medieval rationality, in which, once again, mainly marginalized people are condemned as “evil”, as beings tainted with “sin” deserving of severe punishment. The vehemence with which this campaign is carried out is reminiscent of the witch hunts of former times or perhaps more accurately the prosecutions for heresy by the Spanish Inquisition that turn out to have been mainly conducted against Jewish converts to Christianity as a means of keeping the jews who had been forced to convert by the Spanish kings, in line, to seize their property, and as a means of revenge by some in the Spanish Church who saw their positions being lost to former jews. But the mask became the reality and the prosecutions and many executions were said to be for crimes against God.

The criminalization of people allegedly infected with a virus known as HIV is unique in history. No communicable disease has been criminalized in this manner. It is a phenomenon that has spread to many countries in the world. In some countries specific criminal laws have been passed, as in the UK and some US states for example, in others, such as Canada, the existing criminal law is used. I will briefly outline the various reactions to hiv in the criminal law and its contradictions and inconsistencies, and then discuss what I and others think really lies behind the criminalization of an infection whose existence is not established and whose role in AIDS is refuted.

Section 2. Various criminal laws and prosecutions-selective prosecutions, different theories of prosecution, different criminal reactions in different jurisdictions.-sentencing,

Section 3. Criticism of criminalization, objections (eg the famous 10 reasons why the criminal law should not be applied), by criminal lawyers, human rights groups (eg Amnesty International), certain countries,

Section 4. Motivation for the prosecutions-discussion of racism, condemnation of sexual practices, reinforcement of stereotypes, as theatre to create fear in the general population-profit motive , other factors.

