

# Reframing Justice Responses to Non-Recent Institutional Abuses

## Summary Version





# 1

## Introduction

Adopting the island of Ireland, Northern Ireland (NI) and the Republic of Ireland (ROI), as a twin case study, this project critically examined justice responses to non-recent institutional abuses<sup>1</sup> by church and state in both jurisdictions in a comparative, international and interdisciplinary context and explored how they can be enhanced. The project aims were to:

- (i) **include the lived experiences of victim/survivors and institutional actors and leaders in church and state as core voices to be centred and engaged;**
- (i) **reframe discourses on responsibility and accountability to better address the historical complexities of non-recent institutional abuses; and**
- (i) **create space for innovative justice thinking and processes to be part of a normative way of responding to the abuses and wrongdoing that occurred.**

# 2

## Research Methods

The project was grounded in a systemic, inter-disciplinary literature review concerning non-recent institutional abuses, including the disciplines of law, political science, history, sociology, criminology, and social policy. Empirical research for the project was comprised of four strands:

- (i) **Comparative documentary analysis of the historical and cultural context of non-recent institutional abuses on the island of Ireland, and the strengths and limitations of conventional justice responses, inquiries, redress mechanisms and apologies, conducted within an international context;**
- (i) **Media analysis of coverage of non-recent institutional abuses in NI and ROI;**
- (i) **Semi-structured interviews - 74 interviews conducted with victims and survivors; victims' advocates; lawyers/legal professionals; journalists; academics; representatives of the Catholic Church/religious orders;<sup>2</sup> state representatives; police/prosecution; civil service, senior politicians etc.; the project also drew**

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1 While the broader project initially adopted the term 'historical institutional abuse' in tandem with the literature, we have subsequently adopted the term 'non-recent institutional abuses' to better reflect the continuing, including intergenerational, impacts of abuse for many victim/survivors.

2 While we approached representatives of Protestant religious organisations, they declined to participate.

on some interviews (n=23) and one focus group with victim/survivors from a previous project on apologies conducted by one of the authors.<sup>3</sup> A small number of interviewees (n=7) were interviewed for both the previous and the current project meaning that the empirical analyses presented within this research drew on a total of 90 distinct stakeholder voices.

- (i) Survey regarding use of restorative justice practices by religious organisations (25 responses).<sup>4</sup>

## 3

### Project Findings

#### ■ Historical and Cultural Contexts of Non-Recent Institutional Abuses on the Island of Ireland

The project developed a comprehensive critical examination of the historical, cultural, and structural factors underlying non-recent institutional abuses on the island of Ireland. It found a range of factors combined to provide a deeply complex and challenging context in which state and religious institutions operated in both jurisdictions on the island over many generations. It highlighted both patterns of institutionalisation and abuse and the role and responsibilities of institutional and societal actors. It examined the role of nation and church building, class, land, poverty and the economy, migration, law enforcement, media, and family life.

#### ■ Victim/Survivors of Non-Recent Institutional Abuses

The project also explored the complex range of victim experiences and the specific impacts of non-recent institutional abuses. It considered the range of victim/survivors' views on responsibility and accountability, their needs/expectations of justice and their broad experiences of various justice responses. The study found experiences of profound loss as central to many victim/survivor experiences, alongside well established but diverse justice interests such as the need for acknowledgement and truth; voice and meaningful participation; vindication; access to records; non-recurrence and protection of children and vulnerable adults; reparation, including monetary redress and apology; accountability; healing and belonging.

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3 A-M McAlinden was senior co-investigator on an ESRC-funded study 'Apologies, Abuses and Dealing with the Past' (Grant Ref: ES/N010825/1). See <https://apologies-abuses-past.org.uk/>

4 As the survey was sent to 142 institutions across all major Christian denominations in NI and RoI, this represents an 18% response rate.

## ■ Conventional Justice Mechanisms

Conventional justice mechanisms include criminal law, civil litigation, international human rights law (IHRL), and canon law. The project affirmed well-established critiques of these mechanisms, such as their adversarial and re-traumatising nature, and limited ability to deliver victim/survivor justice interests in both RoI and NI. Limitations include delay jurisprudence in criminal and civil law, restrictive statute of limitations regimes, and limited access to justice through restrictions relating to legal aid, class action mechanisms, protective cost orders and access to information and records.

Several interviewees identified the legal culture on the island of Ireland as problematic in addressing the challenges posed in the context of non-recent institutional abuses. In particular, power dynamics in contemporary legal culture and practice can function to close down dialogue between parties, result in undue deference to lawyers and legal advice, and preclude consideration of the ethics and morality of addressing non-recent abuse cases.

## ■ Inquiries

The project critically assessed inquiries regarding non-recent institutional abuses in NI and RoI in an international context and considered the extent to which they might deliver truth, justice, and accountability for victim/survivors. While the value of inquiries was regarded by some victim/survivors as a form of acknowledgement, the present legalistic culture of many inquiries inhibits their capacity to deliver truth, justice and accountability and precludes a multi-layered conception of truth that is appropriate for non-recent abuse contexts. Multi-layered conceptions of truth include forensic/legal truth, narrative truth, social truth, and healing forms of truth.

The existing legal and adversarial framework regarding inquiries, typically focusing on the procedural fairness rights of allegedly responsible parties, has typically excluded individualised allocations of responsibility for past abuses. The scope of inquiries to date has often been reactive and piecemeal in addressing non-recent institutional abuses, limiting inquiries' contribution to a fuller understanding of the broader patterns of historical and structural issues which are pivotal to institutional reflection and reform.

## ■ Reparations

The project also examined reparation schemes on the island of Ireland, including both material reparations (monetary payments or non-monetary services, such as healthcare, counselling, or housing) and symbolic reparations (primarily apologies, as well as memorials and museums). To date governments in RoI and NI have largely avoided framing reparation as a matter of victim/survivor rights or of state and church responsibilities to provide reparation. In addition, the eligibility criteria of state administered redress schemes has often been criticised as under-inclusive, excluding individuals from institutional contexts relevant to a scheme, or excluding

forms of harm related to the context but not recognised by the scheme. Further, evidence from victim/survivors and advocates suggests adversarial processes have often undermined the reparative goals of schemes in Rol.

Most reparations schemes on the island have been designed and financed by state institutions, with limited financial contribution from religious organisations to public schemes and no comprehensive data on other, often private, payments made by religious organisations to victim/survivors. In the absence of further evidence, this pattern of financing reparations creates an impression of resistance to responsibility for repair on the part of religious organisations, some of whom in turn wish to consider alternative forms of reparation, including restorative dialogue and restorative redress.

## ■ Apologies

The research critically evaluated apologies as a justice response to non-recent institutional abuses on the island of Ireland and internationally. As a justice measure, apologies offer the potential to meet victim/survivor needs related to truth and acknowledgment. To do so, the apology must be understood as sincere, which requires more than acknowledgment of abuses in moral terms alone. The sincerity of an apology can thus be evaluated in relational and legal terms, considering whether it bridges the accountability gap for victim/survivors.

For many victim/survivors, an apology is significantly enhanced when accompanied by openness and follow through on material measures, such as reparations. For institutional actors, concerns about financial cost, legal liability, and reputation function to restrict timely and fuller acknowledgement of abuses. Addressing these competing perspectives openly may enhance engagement between survivors and church and state actors and result in more effective justice responses to non-recent institutional abuses.

### ■ Restorative, Transitional and Transformative Justice

The project evaluated the contributions of restorative justice (RJ), transitional justice (TJ), and transformative justice as models of ‘innovative justice’ for non-recent institutional abuses. These models could exist alongside but independent of conventional justice responses, be integrated with such approaches, or provide more fundamental modification or transformation of conventional justice responses and practices. The project established common themes in these innovative approaches, including (i) the need to address justice responses at both micro/interactional/interpersonal levels and macro/structural levels (via institutional and social changes); (ii) a lack of trust between victim/survivors, the state, religious organisations and society; and (iii) the need to consider whether and how to address the relational dimensions of those affected by non-recent institutional abuses and repair the social bonds.

No innovative justice model has fulfilled its potential fully, especially in the challenging setting of non-recent institutional abuses and no model of innovative justice is capable of completely meeting the justice needs and interests of victim/survivors. However, evidence from interviews across all stakeholders suggests there is an appetite for new and innovative forms of justice to achieve greater truth telling and reconciliation, reparation, and accountability.

### ■ New Typology of Responsibility and Accountability

A central finding of the project is that given the complex structures that inform the occurrence and experiences of non-recent institutional abuses, accountability and responsibility need to be understood more broadly than in exclusively moral or legal terms. An unduly legalistic model, linked to shaming and blaming, may inhibit forward-looking policy reforms and overall engagement between victim/survivors and institutional actors, who are likely to fear and mistrust legal, blame-based processes. At the same time, purely relational approaches may not address power dynamics between victim/survivors and institutional actors, and lead to ineffective justice outcomes in law, or fail to challenge institutional thinking or practices.

In this study we offer a new broader approach to responsibility and accountability, incorporating the moral, legal, relational, and ideological components of coming to terms with the past. This balanced approach addresses some core challenges related to non-recent institutional abuses and offers the potential to engage both individual and collective dimensions of responsibility.

## ■ Transforming Legal Culture

A further significant theme of this research has been the traumatic impact of adversarial legal processes for victim/survivors, occurring within a problematic legal culture on the island. In response, the project, drawing on interviewees' perspectives, suggests the need for trauma-informed lawyering, in recognition of the distinct challenges in the non-recent institutional abuse context and the current limitations of legal culture and practice. Second, the use of non-legal and victim-centric language offers another potential means to transform legal culture and build trust and engagement between stakeholders. Both of these aspects speak to the need for mandatory specific education and training on victim-sensitive communication and approaches for legal professionals and civil servants engaging with victim/survivors.

## ■ Transforming Truth-Seeking Processes

Existing inquiry design and practice limit truth and accountability for victim/survivors and often result in traumatic and adversarial experiences. Three areas of reform are recommended. First, comparative non-siloed models of investigation (such as the Australian Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission 2017) and the Independent Inquiry into Child Sexual Abuse (IICSA 2022) in England and Wales), have adopted modularised approaches to truth finding that improve the investigation outcomes. Each module focuses on individual institutions or particular settings within the broader umbrella of the investigation, producing interim research and/or investigatory reports that in turn feed into public hearings and the final investigative reports. This approach enhances the capacity of the inquiry to address specific abuses and contexts and to map systemic findings across all institutional contexts. This non-siloed approach can also increase the political and legal accountability of the state and institutional actors by examining the extent of historical knowledge about abuses across a range of institutional contexts.

Second, a victim-centric approach to inquiries, rooted in co-design throughout the inquiry planning and operation, and including the provision of more tailored, specialist support services running in parallel to inquiries, can mitigate the foreseeable distress caused by inquiry processes. At the same time, expectations of an inquiry must be informed by foreseeable practical, pragmatic, and budgetary constraints as well as the due process and legal rights of all parties.

Third, our comparative analysis of innovative inquiry models emphasises the potential of enhanced engagement between a range of voices and participants within a trauma-informed framework. Such models offer a more supportive environment for victim/survivors and enable a richer understanding of truth in cumulative terms, addressing not only forensic or legal forms of truth, but extending the understanding to personal, narrative, healing, and restorative truth too. Under a multi-layered conception of narrative truth, the testimony of survivors could be thematically coded and recognised as a 'common truth' of their experiences.

## ■ Transforming Reparations

In reforming the design and practice of reparations, reparations could be conceived of as a human right of victim/survivors, as compared to an *ex gratia* object of charity from state and church institutions. Such reparations could be accompanied by clear written acknowledgment of victim/survivor experience and of responsibility for harm and wrongdoing by state and church institutions. Such acknowledgements must be informed by a holistic sense of trauma, and the potential lifelong impact of trauma. In terms of process, reparations schemes could operate from a rebuttable presumption, expressed in law and policy, that survivors of non-recent institutional abuses are credible and worthy of belief when it comes to the seeking of redress. Several interviewees suggested the need for legal advice for survivors as standard, as part of this approach to redress. Rather than repeat mistakes of the past regarding legal culture, this legal advice could be informed by international human rights law and the principles of restorative and collaborative justice.

Access to records for victim/survivors was a recurring theme from victim/survivors throughout the research and a fundamental barrier to accessing justice across various contexts. Although there are varying institutional practices in recording and sharing archival information, victim/survivor right of access to personal records is fundamental to sincere justice responses and is at the heart of institutional accountability for non-recent institutional abuses.

## ■ Institutional and Societal Changes

The need for broader institutional, ideological, and societal changes also arose in the research. For the Church, such changes require embracing a re-defined Church as part of a commitment to changed thinking and practices and to non-recurrence of abuses, with reflection on the factors that contributed to institutional abuses and prior engagements with justice responses. For the state, the nature of institutional and state engagement with survivors also needs to change to a more respectful, open, less adversarial and more trauma-informed approach. For society, greater consideration could be given to attitudes and responsibility regarding the role of society in institutional abuses and responses to survivors and those coming forward with allegations of all forms of abuse; challenging bystanding; and affording credibility to survivors for different forms of abuse, including those which have recently, or which may not yet have come into the open.

This project and its findings have provided: (1) richer understandings of responsibility and accountability beyond the traditional moral or legal elements to also include relational and ideological aspects; (2) the outline of proposals for innovative justice approaches regarding fundamental changes to legal culture, reparations, truth-seeking processes, and institutional and societal accountability; and consequently, (3) potential avenues for increased engagement between victim/survivors, institutional actors and communities.

In concluding, the project recalls the limits of any justice responses to fully address the losses and harms of victim/survivors and acknowledges the perennial challenges associated with siloed responses from institutional bureaucracies of church and state. Final emphasis, however, is placed on the need for respectful engagement and inclusion of all stakeholders, for a healthy scepticism of legalism, for reform of legal culture and practice, and for the potential of innovative justice approaches that place victim/survivors at the heart of justice responses.

**NOTE:**

This short summary of the project findings has been prepared to accompany the publication of the project monograph.

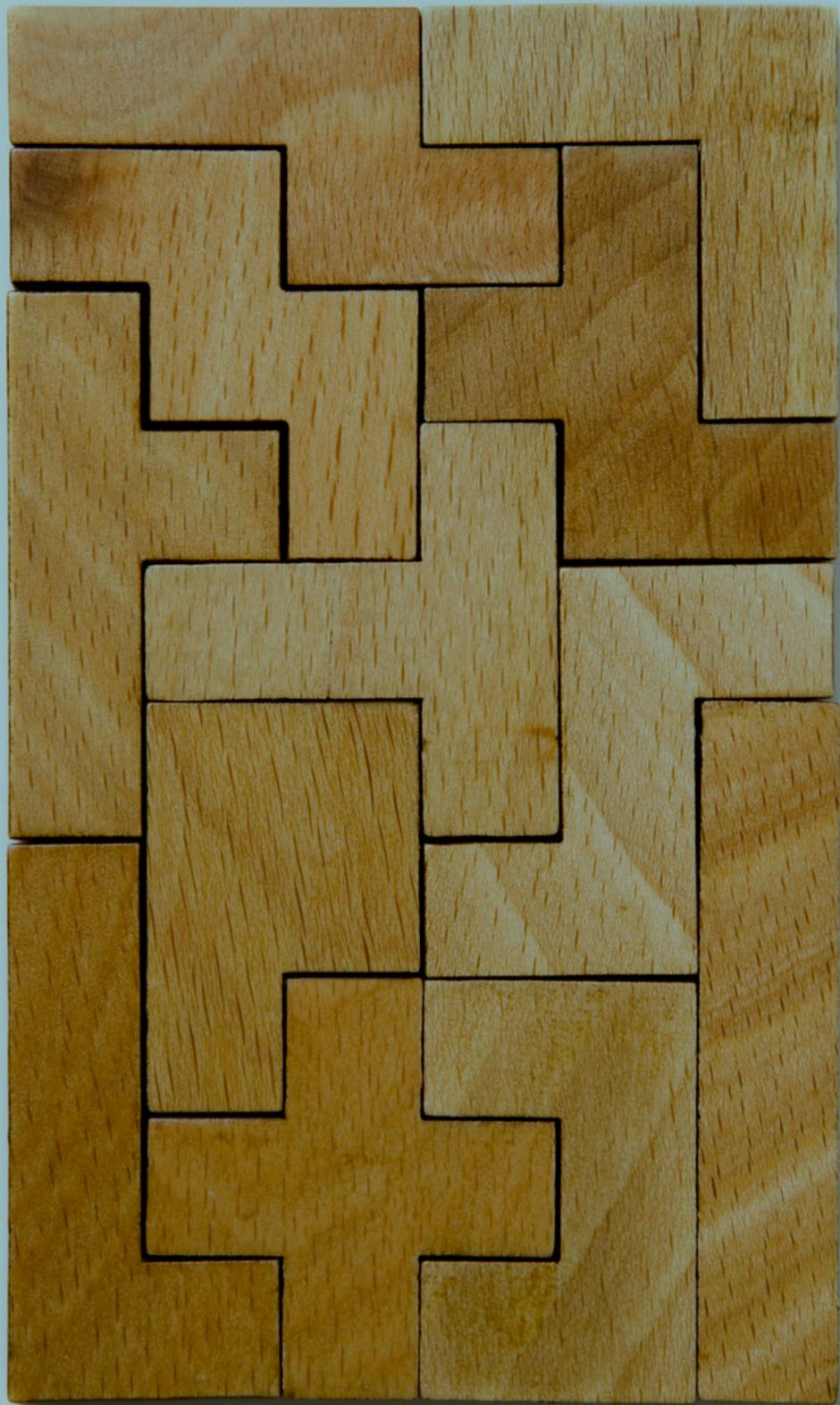
The fully theorised and empirically informed monograph is available open access at:

<https://academic.oup.com/book/59821>

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