

Transforming redress via transitional justice

How should academics engage with survivors and what role might the liberal arts play in imagining a flourishing Ireland?

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Back wall of the Gloucester Street Magdalene laundry, Dublin, which closed in 1996. Photograph: Paulo Nunes dos Santos/New York Times

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Do we listen to survivors when they speak? What do we hear, and not hear, in their testimony? How does survivors' truth compel us to action? These are the central questions taken up by *Redress: Ireland's Institutions and Transitional Justice*, a new collection of essays published by UCD Press that examines the treatment, over the last century, of women and children in Ireland's Magdalene laundries, mother and baby homes, county homes/workhouses, industrial and reformatory schools and the State-run closed adoption system.

Some critics argue that such subjects are irrelevant for today's Ireland. Surely, they ask, after myriad state investigations, lengthy reports, and a third redress scheme in the works, these elements of our past are done and dusted?

REDRESS

IRELAND'S INSTITUTIONS AND
TRANSITIONAL JUSTICE



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Redress

The contributors to this volume offer a different perspective, one that draws on the pain and truth-telling of survivors themselves.

While both jurisdictions on this island have initiated inquiries into institutional and gender-based abuses, culminating in the Ryan Report (2009), McAleese Report (2013), Hart Report (Northern Ireland, 2017), and the Mother and Baby Homes Commission of Investigation [MBHCOI] Final Report (2020), survivors share a common dissatisfaction at their findings. Indeed, that feeling often defines them. Why?

Investigations on both sides of the Border largely operated in private. They sequestered documents and testimony that are crucial sources of evidence. They failed to use human rights law as a framework of analysis or as a guide to ensuring procedural fairness. Survivors, family members, even the police, have been prohibited from accessing the inquiries' archives. Adopted people in the Republic are still denied full statutory entitlements to their own identity and information. State redress schemes invariably decommission survivors' other legal rights by requiring them to sign waivers in advance of accessing financial compensation.

In the case of the MBHCOI report, for example, survivors reject the official narrative which holds "there is no evidence" to suggest that "women were forced to enter mother and baby homes" and "very little evidence" to support claims that "children were forcibly taken from their mothers". Survivor truth-telling over the past 16 months insists on a very different reality.

Likewise, they refute assertions which simultaneously acknowledge that 9,000 children died in the homes under examination and yet fail to identify burial locations for those same babies. How did the Commission arrive at such contradictory findings?

Or take current Dáil Éireann debates, for example. Even as the State promotes redress initiatives for so-called "historic" abuses, survivors and family members continue to be discounted. In March, the Birth Information and Tracing Bill, 2022, the fourth legislative attempt to provide basic information rights to adopted people, ignored many of the 83 recommendations from an Oireachtas committee report that had drawn upon the testimony of affected people and expert knowledge. Minister for Children Roderic O'Gorman then rejected 300 amendments drafted by advocates who sought to bring the law into line with international human rights standards.

Likewise, the long-awaited Institutional Burials Bill, 2022 to allow for the excavation of burial sites of former mother and baby homes fails to address survivors' and family members' demands that coroner investigations be required in all cases so that we achieve accountability for infant deaths in these institutions.

Government proposals to provide financial payments to certain mother and baby home survivors are noteworthy for who they exclude: infants who left the home under six months of age, boarded-out children, and survivors from “care” settings not investigated under the Commission’s mandate.

Last December, the High Court ruled that the MBHCOI treated some survivors unlawfully by denying them fair procedures. Survivors, in turn, claim the report’s findings do not accurately reflect their testimony. The government agreed to the ruling. But even though it had relied on the MBHCOI’s flawed findings, the government chose not to revise its proposed legislation. Instead, it has chosen silence.

The title of the Ombudsman’s 2017 report on the maladministration of the Magdalen Ex Gratia Restorative Justice Scheme encapsulates the State’s record to date in attempting redress for so-called historical abuses: Opportunity Lost.

Redress: Ireland’s Institutions and Transitional Justice asks readers to imagine what true justice might look like if the experiences and expertise of survivors and family members were allowed to lead us to more democratic outcomes. Drawing upon the principles of transitional justice, the book asks how we might assist survivors and the public to evaluate the State’s responses to our histories of institutional abuse and forced family separation.

The United Nations defines transitional justice as “the full range of processes and mechanism associated with a society’s attempts to come to terms with a legacy of large-scale past abuses.” Scholars frequently describe the approach as comprising four key pillars: namely, truth-telling, accountability, redress and reparation, and guarantees of non-recurrence. Operating simultaneously, these four elements are said to provide a holistic method of responding to large-scale injustices. Researchers have long evaluated the potential of transitional justice measures in Northern Ireland as a way to come to terms with the impacts of the Troubles.

More recently, though, scholars have started to consider how the model can be applied to systematic institutional abuse in settled democracies: for example, the removal of indigenous children from their families in Canada and Australia, or the forced migration of children from the United Kingdom to both aforementioned jurisdictions, and these children’s further mistreatment in residential institutions. Essays in this collection offer the opportunity to learn from international comparisons and the inter- and intra-national dimensions of State responses to historic institutional abuse.

Other essays, meanwhile, address the danger that the State may co-opt the language of transitional justice to justify offering a selective or limited justice

model that in effect blocks accountability by denying access to established “democratic” institutions.

We therefore think of transitional justice not as a panacea; rather, we hope these essays will initiate a critical conversation. Two central questions informed the editors’ approach to this book:

First, how do we as academics engage with the voices of survivors, and allow our scholarship to be driven by their testimony?

Contributors subscribe to the survivors’ motto, “nothing about us without us”. Reflecting this commitment, the book opens with a section entitled Truth-Telling and an essay entitled Testimony, which gathers evidence from residents of Ireland, the United Kingdom and the United States. Survivors in Ireland’s diaspora must always be invited to participate and inform State redress initiatives.

The same section includes a selection of long-form journalism by Dan Barry, Anne Enright and Clair Wills. Their interventions drew international media attention to survivors’ voices, helping to counter what Katherine O’Donnell in her essay defines as the belligerent ignorance of the Irish establishment.

Second, what role might the liberal arts play in imagining a flourishing Ireland and facilitating its emergence? Transitional justice has traditionally been considered the work of legal and political science scholars and centres for the study of human rights. This collection brings the humanities, social sciences and the creative arts together with the aforementioned disciplines into conversation around a new set of co-ordinates.

We suggest therefore a pedagogical imperative to transitional justice. Teaching our students about Ireland’s treatment of the socially marginalized combats contemporary complacency and helps create a bulwark that, we hope, will ensure non-recurrence of abuse in the future.

Redress also invites a fresh vision for the academic field of Irish Studies. It re-imagines Irish Studies as embracing a new comparative interdisciplinarity in the service of recognizing the pervasive violence of the past and the present, and seeking redress for its survivors.

This collection demonstrates how Ireland’s “architecture of containment” - the array of inter-connected institutions confining poor or otherwise marginalized citizens and the legislative, bureaucratic and judicial structures underpinning them - gave rise to systematic abuses in the past. But we argue that these same structures continue as a political arrangement that exerts power over survivors,

adopted people and generations of relatives, and over the remains and memories of the dead.

Essays in the collection utilize theories of vulnerability, epistemic injustice, and “disremembrance” to engage with these practices and their legacies. They also underline how investigations frequently hamper traditional avenues of accountability that should ordinarily be available in the democratic state.

As the “Decade of Centenaries” draws to a close next year, there will be a focus on the violence of the Civil War and Partition. But centenaries offer the opportunity to reflect on other systematic forms of societal violence and abuse.

Systems of institutional confinement and forced family separation operated across both jurisdictions, imposing social control over tens of thousands of vulnerable citizens. As essays in the collection demonstrate, codes of silence, secrecy and shaming related to social reproduction in general, and female sexuality in particular, also persist today.

In his book *The Redress of Poetry* (1995), Seamus Heaney notes that dictionaries record multiple meanings for the word “redress”. His interest lay not only in redress as “[r]eparation of, satisfaction or compensation for, a wrong sustained or the loss resulting from this,” but also in exploring an obsolete use of the word: “To set (a person or a thing) upright again; to raise again to an erect position. Also fig. to set up again, restore, re-establish.”

Heaney spoke about poetry’s capacity to act as a form of “redress” that is “an upright, resistant, and self-bracing entity within the general flux and flex of language.”

Like Heaney, the authors gathered in this collection offer their intellectual work in service to a programme of cultural and political realignment. This work provides a more robust knowledge of our recent past and a better understanding of our present, in order to imagine and facilitate a more inclusive future.

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2022). *The editors are donating all royalties in the name of survivors and all those affected by Ireland's carceral institutions and family separation to the charity Empowering People in Care (EPIC).*