When Apology is Not Enough: Ireland's Ryan Commission

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“On behalf of the State and all citizens of the State, the Government wishes to make a sincere and long overdue apology to the victims of childhood abuse for our collective failure to intervene, to detect their pain, to come to their rescue... ‘All children need love, care and security.’ Too many of our children were denied this love, care and security. Abuse ruined their childhoods and has been an ever present part of their adult lives, reminding them of a time when they were helpless. I want to say to them that we believe that they were gravely wronged, and that we must do all we can now to overcome the lasting effects of their ordeals.” (An Taoiseach, Bertie Ahern, May 11, 1999)

With this profound statement, the then leader of the Irish Republic began a process which was to culminate ten years later with the Report of the Commission to Inquire Into Child Abuse (“The Ryan Commission”). During that decade, an ambitious and wide-ranging scheme was undertaken to address a national tragedy which had hitherto been largely unacknowledged. It provides a fascinating case study of a unique approach to historical institutional child abuse.

HISTORICAL CONTEXT

The official childcare system in Ireland has traditionally been identified with the Catholic Church. From the mid-19th century, a vast network of institutions, variously described as an “architecture of containment”, i or a “gulag”, was developed to care for children whose parents were deemed unable or unsuitable to look after them. These were managed by religious
orders but were largely State-funded and, after 1921, were under the control of the Department of Education. The three main categories of Irish institutions were orphanages, reformatories and industrial schools. Orphanages were for children, often with living parents and not from the poorest backgrounds, and were sometimes fee-paying. Reformatory schools were established in the mid-nineteenth century on a British model and solely housed children convicted of criminal offences. However, industrial schools dominated. It has been estimated that total of 170,000 children were committed to industrial schools and reformatories by courts between 1936 and 1970. At its peak at the turn of the 20th century, this system, contained a massive seventy-one schools. Up until the 1950s there were over 6,000 children in the residential care system at any one time.ii

For many years it was tacitly known that these institutions were at best austere places. At worst, some were the scenes of horrific suffering due to malnutrition, cold, illness, emotional deprivation, and deliberate physical brutality and sexual depravation. The extent of harm done to many in these institutions involved not only loss of family, but also deprivation of identity. A number of survivors report being referred to by false names or even numbers, separated from siblings and told that their parents were dead. Inspection, conducted on behalf of the Department of Education was late in coming, often cursory and when critical, not acted upon. Monsignor Edward Flannigan, founder of the charity Boys’ Town in the United States visited Ireland in 1946 and was reported to have described childcare system he surveyed as “a disgrace to the nation”.iii

The details and full extent of the harm that been had caused was as yet unappreciated in 1999, but its reach permeated Irish society. The survivors had been directly affected but also damage was intergenerational, spreading to their extended families, and descendants. Blame could be attributed not only to the direct perpetrators, but also the collusive religious Congregations and Government. The Department of Education appointed inspectors for the system, whose reports were largely ignored despite their highly critical stance from 1939 onwards.iv In 1955 a Ministry of Education visit
to a boys’ reformatory reported, “…the attention paid to the cattle was in marked contrast to the care for the feeding of the boys…” vi Given its extent, (the census of 1956 recorded 5,385 children in industrial schools) a general awareness of what was going had been could not be denied. Many lay people worked in these institutions and in some cases there was considerable interaction between child residents and local communities. There had also been sporadic Garda (police) involvement, due to child deaths or the necessity to return runaways. McAdams’ description of the post-unification GDR is evocative: “Over time, the memory of injustice seeps into the lives of everyone around it. Not only do the victims despair for lack of a resolution, but even the perpetrators can find themselves confined to a legal and moral limbo that can be lifted only through withdrawal from society and death.” vi

Despite this general awareness, there was also denial and what Cohen has described as “collective amnesia” in society.vii The Irish survivors of the system had lived for the most part isolated by secrecy and shame, perhaps in contrast to those in Canada and Australia where exposure of the abuse of indigenous children in residential schools eventually brought some resurgence in ethnic pride and identity. However this was beginning to change in Ireland during the last decade of the 20th century. Ahern’s Apology came in response to a combination of factors which had recently converged to bring child abuse into pressing public consciousness. These included an increasing number of Freedom of Information requests for their school records from former residents (some in preparation for personal legal action), the actions of a few brave campaigning survivors such as Christine Buckley viii and the media campaign of investigative journalists, particularly Mary Raftery. In what has been called “a pre-emptive strike” ix, the delivery of the Apology coincided with the evening television broadcast of the last programme in a documentary series about the institutions, “States of Fear”.x
The Apology was the first step in a process which, it can be argued, prompted a national reappraisal of post-Independence Irish social history. Building on models of the inquiries into abuses against indigenous populations in Australia and Canada and in conjunction with survivors' groups, the Government legislated for an ambitious three-part scheme. The Commission to Inquire into Child Abuse (CICA) would have two arms: an Investigation Committee (IC), tasked to compile a factual historical account, and a Confidential Committee (CC), a story-telling forum with a therapeutic objective. Separate from the CICA was the third component: the Redress Board, to provide financial compensation to those harmed by the system. The survivors who came forward had to chose to testify before either the CC or the IC but either cohort would simultaneously have access to the Redress Board. Those accepting compensation from the Redress Board thereby waived their right to bring a damages claim in the civil courts.

The functions of the CICA were outlined in the Commission to Inquire into Child Abuse Act 2000 as follows:

Section 4(1):

(i) To provide for persons who suffered abuse in childhood in institutions an opportunity to recount the abuse and make submissions;

(ii) To conduct an inquiry into the abuse of children in institutions and to ascertain why it occurred and who was responsible;

(iii) To publish a report setting out its findings and recommendations including in particular recommendations on the steps which should be taken to deal with the continuing effects of abuse and to protect children in similar situations from abuse at the present time and in the future.
It is possible only to very briefly summarise the course of the subsequent decade. The key stage in the story came the period 2003-04, discussed below, where the project had to be reassessed and its process amended. In May 2009 the CICA finally reported (in 5 volumes) “to the people of Ireland” and to a worldwide audience. The bulk of the Report concerned the IC’s factual conclusions about what had occurred in the institutions reviewed. Also included in the Report were also the general findings of the CC which, between 2000 and 2006, heard and recorded the personal stories of 1090 former residents. By this time, the parallel process of the Redress Board had paid out compensation to some 14,000 survivors (having at one time expected 1-2,000) for the damage they suffered, physical, mental and emotional, at a total cost of €1.2b (15-20% of that is legal fees).

Many applicants to the Redress Board reported negatively, particularly in relation to financial outcomes but also with many feeling dissatisfaction with the whole experience. They found the redress process stressful and at times degrading and some had doubted whether their harms had been sufficiently acknowledged.

The 2009 Report presents a meticulous, and often shocking, account of the failings of Church and State, featuring not only testimony from “complainants” (former residents) and “respondents” (the responsible religious Congregations and the government) but also expert reports from historians, psychologists, forensic accountants and many others. The survivors’ reactions to the publication of the Report can be summarised simply: “we were vindicated”. For many, their life experience and that of participation in the Commission process had perpetuated the fear that they would not be believed and that the national “collective amnesia” would prevail. However, at last, this Report “pulled no punches”, while taking care to record the few positive experiences which had been revealed. The Report’s impact on Irish society was described as “seismic” as was evidenced by a commemorative march through Dublin in June, several weeks post-publication. The planners had expected only a few thousand people but more than 10,000 turned out – many carrying small white shoes, to symbolise lost childhood. Six months later, an inquiry into clerical sexual abuse, the Report of the Commission of
Investigation into the Catholic Archdiocese of Dublin ("the Murphy Report") was published.\textsuperscript{xiii} Significantly both Reports were forward- as well as backward- looking, highlighting a number of recommendations for contemporary child welfare.

**A TRUTH COMMISSION?**

The Irish experience provides a wealth of opportunity for the study of apology, "therapeutic story-telling", historical inquiry, retribution and reparation. From a legal perspective, one considers the interaction of the different aspects of the process, and speculates how things might, with the benefit of hindsight, have been done differently. Theoretical analysis of the Commission draws out certain themes which may be applicable to other jurisdictions such as Scotland and Northern Ireland, which are designing their own responses to historical institutional abuse.

The model of the truth commission was explicitly cited by Irish politicians, and others, at the inception of the CICA.\textsuperscript{xiv} Research which has been conducted upon truth commissions can inform study of the CICA, while it must be recognised that there is a useful debate to be had about the distinctions between the CICA and the truth commissions in their purest form. As a historian, Charles Maier gives a definition: "A truth commission is a panel that attempts to establish the facts of human rights abuses under an earlier regime or set of governmental practices but refrains from prosecuting the perpetrators who testify under its auspices."\textsuperscript{xv} While they were not usually discussed specifically in human rights terms, there is no doubt that many of the abuses uncovered by the Ryan Commission could have been designated as such, and they were certainly the result, *inter alia*, of governmental practices.

Truth commissions are also concerned with healing and reconciliation, as well as “moral debates about accountability for actions that were once legalised government policy, jurisprudential and legal issues about due process, retrospective justiciability and enforcement…”\textsuperscript{xvi} Martha Minow
claims that such commissions can express the complexity of events in a way
that conventional legal tribunals cannot, by providing a cumulative narrative
rather than a verdict. She focuses on the sense, reflected on below, in which
they offer the restorative power of “truth-telling to sympathetic listeners”.
National healing was one objective of the Irish process but, while some
personally beneficial effects were anticipated for those parties co-operating
with the IC and, more particularly the CC, no truly restorative justice
paradigm, involving meaningful confrontation between victims and
perpetrators, was countenanced. Archbishop Tutu’s hope for “forgiveness and
atonement” as an outcome of South Africa’s Truth and Reconciliation
Commission was not explicitly sought in Ireland. The focus will be upon the
Investigation Committee (IC) as an example of the way in which the demands
of legal “due process” and its manipulation by the powerful can force
compromises and the implications of these compromises. I will argue that the
splitting of the IC and the CC into exclusive cohorts further deprived a large
constituency of stakeholders from any sense of reconciliation or closure.

THE TURNING POINT

The CICA was officially constituted in early 2000 and sat publicly for
the first time in June, 2000. The CC quietly began its private hearings in
September, 2000 and its life trajectory was not noticeably impacted by the
difficulties to be discussed in relation to the IC. Much of the first three years of
the its existence was spent exactly defining the scope of the IC’s inquiry, the
entitlement of state-funded legal representation for the participants, including
both respondents and complainants, and resourcing more generally, as the
immense size of the task which had been undertaken gradually became
obvious. The constitution and operation of the Redress Board was dealt with
apart from the CICA and these details are beyond the scope of this paper.
However the negotiations over redress provided a further distraction and
obstacle to the commencement of the IC’s process and, in addition to that
noted below, a potent demonstration of the bargaining power of the Church.
Originally, it was assumed that all complainants to the IC would be given the opportunity to tell their story directly to the Commissioners in session. However by 2003, 1,712 complainants had come forward, making allegations about over one hundred institutions: vastly in excess of the number which had been expected at the outset. It was calculated that to permit each complainant to testify in person to the IC, with many allegations being contested by the respondents, could result in “mini-trials” over a period at least eleven years. Overwhelming demands on time, money and manpower were relevant, as was awareness of the rapidly diminishing life span of many of the ageing population of survivors.

The crucial stage in the history of the CICA came in 2003-2004. Since late 2002, the Commission had been petitioning its political masters, the Department of Education and Science, for the additional resources necessary to cope with significantly greater numbers of complainants to the IC. In September 2003, Ms Justice Laffoy, the respected original Chairperson of the Commission, tendered her resignation and voiced her frustration with the politicians: “The current mandate, while still on the statute book, has, in effect, become inoperable and the Commission has in a practical sense been rendered powerless. It is clearly not possible to predict which parts of its existing functions and powers will survive the review.”

She was succeeded as Chair by Sean Ryan S.C., who then conducted an exhaustive review of the Commission’s procedures and, in conjunction with consultation with all interested parties, considered how best to achieve its mandate. He was faced with evident cracks in the political support for the Commission and dissent between different survivor factions. Most significant was the widely varying extent of sympathy, support and co-operation from the respondent religious Congregations for the process, despite the fulsome apologies from some.

Although the Commission had not been established as a Tribunal of Inquiry in the technical sense, it was provided with a range of semi-judicial powers which supported an inquisitorial role (set out in section 14(1) of the
2000 Act), including that to subpoena witnesses and to order the disclosure of documents. The IC was to receive evidence under oath and to make findings of fact based upon the civil burden of proof. Its functions were detailed in sections 12 and 13 and the latter gave the IC the discretion to name, not only institutions in which it found that abuse had occurred, but also individual abusers. This power of identification, or “naming and shaming”, provoked vociferous opposition and legal challenge by some of the religious Congregation respondents and this threatened the survival of the CICA. In 2002, the Congregation of the Christian Brothers, the largest religious Congregation and that against which the largest number of complaints had been made, launched a vigorous legal campaign against the Commission, in particular its power to name specific perpetrators.

In the case entitled Michael Murray and David Gibson v Commission to Inquire into Child Abuse, Minister for Education and Science, Ireland and the Attorney General it was alleged that the Commission “manifested an intention to operate procedures which are unfair and contrary to the principles of natural and constitutional justice” xxii It was claimed that the bulk of allegations would pertain to the 1940s and 1950s and that a large number of both the alleged perpetrators and their managers was either dead, extremely elderly and infirm or untraceable. These evidential deficiencies, combined with the long passage of time, would make rebutting allegations of abuse extremely problematic.

This legal action constituted a fundamental challenge to the purview, powers and procedures of the Commission, and defending itself through its various phases meant that the Commission was diverted from embarking on its core function, effectively until June 2004. The High Court decision in Murray upheld the constitutionality of the Child Abuse Act 2000 but it also strongly reminded the Commission of the strict evidential requirements it must adhere to, if naming and shaming was to be pursued; additionally substantial legal costs were awarded against the Commission. The Christian Brothers promptly commenced an appeal on the constitutional issue to the Supreme Court.
With a view to the threat posed by the Christian Brothers’ appeal (which would be discontinued at the last minute in June 2004) and, in the face of escalating delays and costs, Mr Justice Ryan undertook a wide-ranging consultation exercise with all interested parties in May 2004. He concluded that in order to preserve the core function of the IC, that of compiling a detailed record of the truth of where and when abuse had occurred, the discretion given to name and shame individual perpetrators must be forgone. Further, in view of the unexpected number of complaints, in order to meet the criteria of the IC’s Terms of Reference, according to the guiding principle of “do no further harm”, the way forward would be to impose a system of case management consisting of sampling the complainants. This meant that while all complainants would be heard, not all would testify in person before the full IC. Those who were selected to testify before the Committee would be those with the strongest cases, in reference to the selected 20 key institutions about whom there had been the most complaints. Approximately other 500 complainants gave their evidence in private to members of the Committee’s legal team.

Thus, Christian Brothers had threatened to disempower the IC, and ultimately managed to alter its course while, some argued, diminishing any retributive function the Commission would otherwise have had. And this obstruction was ongoing. As late as November 2006, after a break of almost six months, the IC reconvened for a specific hearing concerning what it described as the ongoing failure of the Christian Brothers to comply with requests for documents. In a highly charged session, Mr. Justice Ryan accused the Congregation of wasting the Commission’s time and expressed not only anger and frustration but also questioning whether, in some of the their responses to the Commission, the Christian Brothers were being “deliberately offensive”. 
FEASIBLE JUSTICE

We have seen that the CICA, from June 2004, followed an altered course from that envisaged in 2000. The design and execution of the process in Ireland was fundamentally the creature of the State, on behalf of its citizens, and as such was shaped by political and legal imperatives. The IC initially had wide objectives, which by necessity evolved to adapt to the contingencies, some of which have been highlighted. For Minow, there will always be a wide range of societal responses to “collective violence” of the past, and inevitably there will be a “lurch” among rhetoric and goals. Leebaw observed, of truth commissions, “…conflict and compromise frame their mandates and investigations”. The key Irish compromise, in order to achieve “feasible justice” came at the turning point of May 2004, when Mr Justice Ryan, aware of the significance of this expedience, asserted that the IC “…is an inquiry into child abuse – it is not an inquiry into specific allegations of child abuse. The latter had always occupied only an “ancillary” role and now rejecting this was essential to make the main objective attainable. “The inquiry into child abuse can survive a prohibition on naming individuals. But it cannot survive a prohibition on naming institutions.”

Paul Gready stresses the importance of never forgetting that “state inquiries are a form of “politics by other means”. What he called the “methodologies of the production of truth” were, in Ireland heavily influenced, not only by the government’s own agenda, but by the use of the legal system by some religious Congregations to flex their power in a way which reflected the traditional hierarchy in Ireland.

Even after the reconstituted IC recommenced proceedings in June 2004, some of its quasi-criminal attributes endured, due to the mandate to make findings of fact in relation to named institutions; therefore these necessitated elements of “due process”: the anonymization of some individuals, privacy of many hearings, and adversarial cross-examination (while not including the strictest evidential rules such as that against hearsay). This “legalism”, which was necessary to maintain the legitimacy of the
process, also proved time-consuming and expensive. Most expensive and procedurally significant of all was the State’s extensive of legal representation for all the individual and institutional participants. With reputations at stake, particularly those of the Congregations, up to three lawyers were available for each participant. Some witnesses who testified in “closed proceedings” found themselves closeted with up to seventeen people, most of them lawyers. Even one of the Commissioners reflected in 2010 that the IC had been “over-lawyered”. The legal cost were astronomic and will account for a considerable proportion (as yet to be determined) of the final cost of CICA (estimated at €160m – 60 times more than originally anticipated). xxi

THEATRE OF POWER

In the process of fact-finding, the inevitably contested nature of “truth” must be recognised at the outset. But in the Irish case, not only the product of the inquiry but also the integrity of the process cannot be taken at face value. In his work appraising the South African Truth and Reconciliation Commission (which had its own debates over naming and shaming), Gready highlights a number of themes which are relevant to understanding the CICA. He stresses the need to “incorporate insights into power relations in narrative construction, understandings of oral testimony and memory beyond their use as evidence …” Further, “[t]he past is infected by agendas of the present”. xxi And what happened in Ireland demonstrated the way that the law can be legitimately and overtly used as a means to promote these agendas. xxxii It should be pointed out at this stage, that while the overt resistance that was seen from some of the religious Congregations has been discussed, additionally under investigation was the State, as represented by the Department of Education under whose purview the institutions had operated and been funded. This raised for some critics an obvious question about conflict of interest, with the blurring of the lines between the investigators and the investigated.

In attempting to control both the IC’s mandate and its methods, the Church in the guise of the Christian Brothers, was flexing its, arguably waning, social and political influence – and with some degree of success. The
Christian Brothers’ legal challenges illustrated the way in which, according to Ashforth an inquiry can ultimately function as a “theatre of power”, that is, “a symbolic ritual aiding in establishing and reproducing the power of modern states’ or for our purposes, institutions.”xxxiv In addition to the symbolic and tactical effects of their obstruction, for many complainants involved in the proceedings it must have created feelings of frustration and impotence which replicated the earlier abuse they suffered.

The lack of co-operation from perpetrators is a chronic issue for truth commissions, and was addressed in South Africa by means of the “carrot” of amnesty in concert with the “stick” of potential prosecution.xxxv Both differences in conception but also the absence of any realistic prospect of sticks or carrots are ways in which the Irish case can be differentiated from the purer model of the truth commission. But they both demonstrate how, according to Gready, such inquiries are vulnerable to co-option by powerful forces in society who will mobilise the law to protect themselves.xxxvi And in Ireland, as in South Africa, “ultimately it was those who had most to hide who astutely sought constitutional protection…”xxxvii

A THERAPEUTIC ALTERNATIVE

With the disputes about its mandate and objectives apparently resolved in 2004, it is appropriate to finally assess the IC according to the objectives then stated of fact-finding and the compiling of a Report. However, the ascertainment of truth is value-laden and can only be at best approximate. Given the passage of time and the reputations at stake for the respondent Congregations, it was predictable that not only the inquiry process but also the validity its findings would be strongly contested. The Irish State had a lot to be gained politically in distancing itself from the darkness of the past and in “… reaping some of the benefits of truth-telling as a way of maximizing its legitimacy.”xxxviii Here, the expedient and necessary prioritisation of the compilation of an historical account may have been at the expense of two other elements: justice and the therapeutic nature of narrative.
From the perspective of the historian, Charles Maier questions whether “doing history” is the same thing as “doing justice”. This is a justified query, and he explains the distinction: an historical record has no obvious or inevitable consequence, whereas “justice’ indicates a final reckoning or closure – usually with a score being seen to be settled or a price paid.xxxix “The truth commission may not be able to provide justice in the sense of rendering retribution, but it at least avoids the accumulated injustice of denying recognition of suffering. It is a step towards acknowledgment.”xl Likewise, Weschler has observed that torture survivors often demand truth more urgently than justice.xli

Its abandoning of “naming and shaming” must be regarded as having moved the IC farther away from the criminal trial or retributive model. There are strong arguments that this need not, however, be regarded negatively. Minow vividly details the virtues of the non-trial option: “…for truth-telling, public acknowledgment of what happened, and attention to survivors, a commission of inquiry actually may be better than prosecutions.”xlii The former has a wide lens and is capable of sifting large amounts of material across time, then assimilating and ordering its detail. The prosecution, however, must focus narrowly on an accused individual and the disposal of his case.xliii

Cohen also doubts whether the “…conventional rituals of evidence according to the criminal law model offer an effective way of obtaining knowledge”.xliiv His analysis of the “transitional process” from Latin America to South Africa has convinced him that “the deepest grievances of most people are untranslatable into the criminal model.”xlv Minow acknowledges its retributive significance, but recognises that often a trial will be impossible and the truth commission need not be “second best”. Trials, with their “sharp constraints” may miss the opportunity for rectification of damage to human dignity. A truth commission, with its attention to victims and indeed bystanders, may be more healing to the individual and indeed society.

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The act of recounting the details of suffering can be valuable in a therapeutic sense. Those who have worked with survivors of traumatic events explain that it often enables the events from the past to become organised and objectivised in a way that they can be dealt with psychologically or practically. The reception which these narratives receives is, of course, highly relevant. Ideally they will validate the perception that teller has of his experience; while negative reactions not only denigrate but even repeat and reinforce harm.xlvii

In Ireland, the therapeutic function was admirably fulfilled for more than 1000 complainants who, given the choice between the IC and the CC, elected to attend the CC. Some of that number had originally opted for the former but had taken the opportunity to change to the CC when the “sampling” approach was adopted in 2004. The CC operated according to the “listening’ model”, in a warm, intimate and unchallenging atmosphere, with attention to detail and the provision of personal support both before and after. Survivors told their stories in their own way, instead of being questioned, and many were accompanied by friends or relatives. These stories were recorded confidentially and compiled into a general but detailed account in Volume III of the final Report.

The complainants testifying before the IC, on the other hand, did so in a distinctly non-therapeutic environment, despite the best efforts of the Commissioners to maintain a sympathetic atmosphere. While their hearings were ostensibly “private”, these were formal and determined by the heavy legal presence and strict procedural constraints. Some felt frustrated that individual perpetrators had, arguably, been spared and some had a sense of being “used” by the Commission, with their testimony treated as no more than a means to an end. Leebaw confirms that, for some, ‘Testimony detailing the physical and emotional toll of past abuses may generate a more profound awareness of past injustices and the significance of their legacy in a process that refuses to reduce diverse experiences of suffering and loss to categories amenable to legal remedy.’xlvii Arguably, had they not been forced to choose between participation in either the CC or the IC then complainants could have
had the satisfaction of telling their story in the sympathetic setting of the CC, following their earlier experience in the adversarial forum of the IC. This would have had resource implications but potentially would have increased overall satisfaction with the CICA process.

CONCLUSION

Maier recognises that the truth commission is but a relatively recent “expedient”, which has emerged, seeking the value of establishing “the historical truth of past practices, even if some sort of retributive reckoning remains out of reach.”xlviii When he took over as Chair in 2004 Mr Justice Ryan admitted that the original CICA as planned, “...tries to do too much – and at the same time.”[sic] But As McAdams points out, attempts to repair long-standing wrongs and damage must not be constrained by a either difficulty in conception and execution or by inevitable uncertainty as to where they will lead. As McAdams points out, attempts to repair long-standing wrongs and damage must not be constrained by a either difficulty in conception and execution or by inevitable uncertainty as to where they will lead.xlix A hard-wrought adaptation was possible and “feasible justice” achieved.

For many in Ireland, the acknowledgment of suffering was sufficient to draw a “moral line” under a previous practice, allowing the State to move forward with legitimacy.xl However, as McAdams states, overcoming the past may be an illusion.lix For some survivors, there remained much ambivalence: on the one hand they felt vindicated by the strong tone of the final Report, but on the other, missed the closure believed to have been achievable in a more strongly retributive approach. The way that the Church demonstrated, and some would say, flaunted its power is partly responsible. However, given the inevitably that truth and the allocation of responsibility, indeed blame, would be contested, it was clear from the outset of the process that all the respondents’ rights to “due process” would be necessarily observed. Ultimately this came to be prioritised to an extent that the resulting formality
ensured the integrity of the outcome, but diminishing the experience of the process for many complainants.

Michael Ignatieff acutely observed, “The past is an argument and the function of the truth commission, like the function of honest historians, is simply to purify the argument, to narrow the range of permissible lies.” The IC may be seen as a hybrid body based on compromise: that is, a forum which was too adversarial for truth-telling but not stringent enough for “justice” in the retributive sense or what Maier called “weak justice”. But while my focus has been upon what could have been better, and the lessons to be learned for the future, the Irish experience must be regarded as a success story. The fortunate coincidence of political will with a period of economic generosity, the personal commitment and skill of the Chair Mr Justice Ryan and his team to combined to reach a compromised but still extremely impressive (and at times potentially unachievable) conclusion of the primary phase of the Irish recovery process. Maier has reminded us that even retributive “strong justice” is imperfect and if the only choice is between a “truth commission” and silence, then the former, with all its compromises, is to be applauded.
NOTES

I would like to thank all those in both Ireland and Britain who so unselfishly assisted me and without whom I could not have completed my research. Any flaws are mine alone.


ii Dail Debates October 1, 2003 vol 571.

iii Mary Raftery and Eoin O’Sullivan, Suffer the Little Children (Dublin: New Island, 1999), 190.


v D/Ed SpEd G001/e Daingean Reformatory, Raftery, Suffer, 103.


viii Christine Buckley is a Dublin woman who was raised in Goldenbridge Industrial School, which was run by the Sisters of Mercy. She was one of the earliest and most persistent campaigners for justice and with Carmel McDonnell Byrne she has founded the Aislinn Centre which provides support for survivors.

ix Smith, Remembering, 5.
RTE Television, broadcast on 27 April, 4 May and 11 May 1999. Written, produced and directed by Mary Raftery. See also Patrick McCabe, *The Butcher Boy* (Delta Books: 1992) and *Dear Daughter* (RTE:1996).

[xi](http://www.childabusecommission.com/rpt/pdfs/)

Patsy McGarry, “Lawyers paid €138.5m to handle abuse applications,” *Irish Times*, June 13, 2009

This was a government-sponsored study of the official (Church and State) handling of reports of clerical abuse in the last quarter of the 20th c. A similar inquiry was published in July 2011 in respect of the Archdiocese of Cloyne (Cork) and there have been calls for this process to be extended to the whole country.

For example, Tom Boland (former Head of Legal Affairs at the Department of Education) quoted in June, 2004 reflecting on the planning stages of 1999. CICA Report: Vol 1, Chapt. 1 para 1.64.


Martha Minow, “Hope for Healing”, *Truth v Justice*, 245.


‘The Indemnity’ is the name given to a settlement negotiated in 2002 between the Conference of Religious of Ireland (CORI) and the Departments of Education and Science, and Finance. This capped the churches’ contribution to the Redress scheme at €128m. At the time this was estimated at 50% of the totality of claims, however due to the dramatic increase in payouts, it ultimately represented a very small percentage. There is ongoing controversy about the extent to which the Indemnity could or should be renegotiated, along with claims that CORI has not honored even its relatively small commitment.


xxiv The original legislation was amended to effect this change in the Commission to Inquire into Child Abuse (Amendment) Act 2005, s. 4.


xxvi Minow, *Truth v Justice*, 254


xxviii Maier, *Doing History*, 263.

xxix These comments were written by Mr. Justice Ryan in his unpublished “Position Paper on Identifying Institutions and Persons under the Commission to Inquire into Child Abuse Act 2000” circulated internally in May 2004.


xxxi Interestingly, reports on the legal costs of do not seem to have evoked a significant level of comment from the Irish taxpayers. Ireland’s 2011 EU/IMF economic “bailout” arrangement required, in its memorandum of understanding, the establishment of an independent regulator to oversee reform of the Irish legal profession. The cost to the taxpayer of legal services generally has been described as “exorbitant” by Declan Purcell, the Chairman of the Competition Authority.


xxxix Maier, *Doing History*, 264.

x Maier, *Doing History*, 267.


xlv Cohen, *State Crimes*, 34.


xlvii Maier, *Doing History*, 264.


liii Maier, *Doing History*, 269.