What is required for effective redress of historical institutional abuse?

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Introduction

- Distil research on redress from Canada and Australia; relate to Northern Ireland
- Responses to institutional abuse: prosecution, public inquiries, civil litigation, and redress schemes
- What is victim redress?
- Redress schemes:
  - how decisions are made in designing them
  - lack of research or reflective reports to guide us
- Nine points about redress and effective redress
Point 1: Effective redress requires three levels of analysis: societal, group, and individual

- Societal: history, social structure, and inequalities
- Group: all relevant groups
- Individual: all relevant individuals

- Societal level
  - historical and contemporary relationships of govt to church, religious, charitable, and medical orgs
  - age, class, racial-ethnic, and gender inequalities
  - colonial and post-colonial histories
Point 2: Effective redress requires understanding historical wrongs and their causes

- Wrongs
  - *core* (all 19 cases): failure of govt and/or church authorities to protect and care for children

  - *core-plus* (five cases): policy/practice wrong against children (three cases); wrong against children part of discrimination against a political minority group (two cases)
Causes of wrongs and abuse

- Political and economic interests of govts, churches, religious orders, charitable orgs, and medical authorities

- Beliefs and attitudes of staff and members of the general public; children in ‘care’ viewed as ‘undeserving’ and as ‘moral dirt’ (Ferguson, 2007) by others
Point 3: Effective redress requires understanding how it all came to be

- The ‘truth’ of what occurred may not be fully known
- Societal responsibility should be discussed
- Types of truth mechanisms, commemorative, and oral history activities are vital for v/s, family members, responsible organisations and individuals, institution staff, and general public
Point 4: Effective redress requires turning the tables on ‘delay’

- Time 1: year of first complaint to authority
- Time 2: year of official sustained response
- Time to respond: \( \text{time 2} - \text{time 1} \)

Of 19 cases:
- time 1 (avg) = 1959
- time 2 (avg) = 1996
- time to respond = 37 years

Northern Ireland: time 1 (1958) and time 2 (2012)
- time to respond = 54 years (similar to Australia)
Point 5: Effective redress requires understanding bargaining power and modes of negotiation

- Group level
  - Contemporary relationships among all the key actors (govts, church or charitable entities, insurers, v/s groups, legal representatives, service providers, among others) in negotiating the design and implementation of a redress scheme
Different outcomes, bargaining power, and modes of negotiation

- Canadian *ex gratia* payments larger than Australian
  (2012 £: 28,500 and 14,400 avg)
- Why?
  - how (or whether) schemes were negotiated
  - bargaining power
  - modes of negotiation
- The Australian Royal Commission’s handling of redress and civil litigation: an expedited and transparent approach to building consensus
Point 6: Redress moves slowly

- Time 2: year of official response
- Time 3: year of tangible result (half of claimants rec’d decision on monetary payment)
- Time to tangible result: (time 3) minus (time 2)

**Time to tangible result** (‘the wait for justice’)

- Canada and Australia (20 schemes): 7 to 8 years (avg)
- Ireland (RIRB): 7 years (2000-2007)
- Northern Ireland (est year of tangible result): 2019 to 2020
Point 7: Effective redress requires clarity on subjects of redress, validation process, money logics, and purpose of payments

- Group and individual levels
- Subjects of redress
  - any type of abuse or neglect, or sexual abuse only?
  - peer abuse?
  - time in care: what types of care? which institutions?
  - abuse in community-based contexts?
  - policies and practices that targeted certain children?
- Eligibility and validation
Money logics

- Money logics: *how to decide* and *how much to pay*
  - *How to decide*
    - individualised, using grids or scoring
    - equality-based or common experience formula
  - *How much to pay*
    - open-ended, high maxima
    - capped, lower maxima
    - flat
Purpose of payment

‘What is the amount of money doing? What is it achieving? How is it contributing to justice?’ (McClellan, 2015)

Three purposes

(1) Acknowledgment that abuse was wrong or policy/practice wrongs were committed

(2) Assistance to bring ‘closure’ and ‘healing’ (limited form of rehabilitation)

(3) Tangible recognition of hurt and injury (expansive form of rehabilitation and social welfare)
Point 8: Effective redress requires consideration of all payment models and their trade-offs

- Purposes can be combined in one case
- Indian Residential Schools (IAP) and Irish RIRB have similar money logics and purposes; highest avg payment
- Trade-offs in individualised assessment and equality-based formulas
  - application process
  - time
  - payment amounts
  - legal fees
Point 9: Effective redress is a political process

- Govt/church the ‘author of the wrong’ and the ‘master of the compensation process’ (Jacobs, 2007)
- Address potential mistrust and suspicion
- Change may occur in redress design and implementation
- Human rights arguments can soften the ground, but more is required
- Forge a scheme that is right and just for Northern Ireland: consider a range of redress models and be imaginative