

What is required for effective redress of historical institutional abuse?

Professor Kathleen Daly
School of Criminology and Criminal Justice
Griffith University, Brisbane
k.daly@griffith.edu.au

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Public lecture

Institute of Research in Social Sciences (IRISS)

Ulster University, Belfast

15 June 2015

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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: (time 2) minus (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