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CURRENT DEVELOPMENTS: BOOK REVIEW

Review of Child Sexual Abuse Reported by Adult Survivors: Legal Responses in England and Wales, Ireland and Australia

by Sinead Ring, Kate Gleeson and Kim Stevenson. Routledge, 2022, 350pp (£104 hardback) ISBN: 978 1 138 60535 0

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In recent decades, several Western societies have begun to address legacies of non-recent violence, including colonial era violence, the institutionalisation of women and children and child sexual abuse (CSA).[1] For instance, in England and Wales, the report of the Independent Inquiry into Child Sexual Abuse published its final report in 2022,[2] after a seven-year process involving 19 separate investigations, including allegations of abuse in the Roman Catholic and Anglican churches, residential schools, and children in custodial institutions. In Australia, the Royal Commission into Institutional Responses to Child Sexual Abuse issued its final report in 2017,[3] having investigated allegations of abuse in educational settings, religious institutions, sporting organisations, among others. Both reports detail widespread sexual abuse of children across a range of institutional and social contexts and common experiences of vulnerable victims struggling to be heard or believed and of ineffective practices of safeguarding and child protection.

To date, while there is extensive literature on CSA across a range of disciplines, academic literature addressing investigative and other legal and policy responses has focused either on national level case studies,[4] or comparative analysis within a settler colonial framework, examining especially Australia and Canada.[5] Broader comparative analysis, and analysis focused on legal responses, has been rarer.

Sinead Ring, Kate Gleeson and Kim Stevenson thus fill a significant and critical research gap with their book, *Child Sexual Abuse Reported by Adult Survivors: Legal Responses in England and Wales, Ireland and Australia*. The authors note that the demands for justice from survivors of non-recent child sexual abuse (NRCSA) have provoked 'unprecedented challenges to what were long established norms of practice and doctrine in common law countries', particularly due to the interval of time between the original harm and the decision of a survivor to pursue a legal response.[6] The authors

[1]K Daly *Redressing Institutional Abuse of Children* (Palgrave Macmillan, 2014); J Balint et al *Keeping Hold of Justice: Encounters between Law and Colonialism* (University of Michigan Press, 2020).

[2]A Jay et al *The Royal Commission into Institutional Responses to Child Sexual Abuse* (October 2022), available at https://www.iicsa.org.uk/key-documents/31216/view/report-independent-inquiry-into-child-sexual-abuse-october-2022_0.pdf (last visited 18 October 2023).

[3]Royal Commission into Institutional Responses to Child Sexual Abuse *Final Report* (Royal Commission into Institutional Responses to Child Sexual Abuse 2017).

[4]M Keenan *Child Sexual Abuse and the Catholic Church: Gender, Power, and Organizational Culture* (Oxford University Press, 2012).

[5]J Balint et al 'Rethinking transitional justice, redressing indigenous harm: a new conceptual approach' (2014) 8 International Journal of Transitional Justice 194; R Nagy 'Transformative justice in a settler colonial transition: implementing the UN Declaration on the Rights of Indigenous Peoples in Canada' (2021) The International Journal of Human Rights 1.

[6]S Ring et al *Child Sexual Abuse Reported by Adult Survivors: Legal Responses in England and and Wales, Ireland and Australia* (Routledge, 2022) p 1.

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rightly emphasise several causes to such a 'delay' in reporting, including the victim's relationship with the abuser, especially in family cases, a child's understanding of their experiences and, most significantly, the attitude of adults to reports of CSA. The authors illustrate how cultures and practices of silencing children, not believing or dismissing their claims occurred across each of the jurisdictions studied in the book.[7] In response to these challenges, parliaments and courts have responded in revolutionary yet ambivalent ways to attempt to deliver justice for survivors. The book thus performs a significant role in assessing whether these justice measures were appropriate and effective for survivors.

Part I of the book frames the problem of NRCSA, assessing how England and Wales, Ireland and Australia began the processes of acknowledging the profound and widespread nature of the issue, especially in changes to the law and policy on child welfare and child sexual abuse in response to survivor-led activism and media scrutiny.

Chapter 2 considers the 'discovery' of CSA in England, Wales, Australia and Ireland. The chapter identifies the emergence of CSA scandals across a variety of contexts in each jurisdiction, such as abuse in residential children's homes, clerical abuse, abuse involving celebrity perpetrators such as Jimmy Savile, and abuse in sports such as football and swimming. This chapter benefits from the authors' holistic approach to identifying CSA scandals across these contexts. In doing so, the book re-positions CSA away from the purely clerical or institutional focus which has dominated discussions of CSA since the early 2000s. This broader approach identifies the continuities of harm and shared challenges facing survivors across diverse contexts.

Chapters 3–5 assess the evolution of legal and policy frameworks regarding child sex offences in each of the three jurisdictions considered in the book, examining the doctrinal criminal law and procedural frameworks for CSA. In doing so, the chapters share a thematic focus on the evolution of the law on the age of consent and note changing attitudes, from the nineteenth century to the present, towards the protection of boys and girls from sexual violence, with particular anxieties across each jurisdiction regarding sexual violence against girls, framed as both virtuous and in need of protection and as a danger to respectable men. In contrast, the result was that sexual violence against boys was not addressed for much of the twentieth century.

In considering the procedural dimensions of prosecuting CSA offences, the authors note the persistent failure to accommodate the distinctive needs of children as witnesses and alleged victims within criminal trial processes, with 'uncompromising legal rules, age-inappropriate questioning and cross-examination' throughout the twentieth century.[8] The authors frame the evolution of the criminal law here as a conflict between law and other disciplines that offer empirically grounded understandings of a child's capacity to provide credible evidence, and of the particular needs and appropriate forms of engagement with an alleged child victim of sexual violence.[9] The authors' concern is useful in reinforcing the argument that addressing NRCSA should prompt a state and society to consider the ongoing effects and challenges facing survivors, and not seek to construct or maintain barriers between the past and the present.

In reviewing Ireland's law and policy regarding CSA, Chapter 4 emphasises the threat posed by CSA to Ireland's post-independence national self-image as morally pure and superior. The result of this self-image was the repression of perceived sexual immorality and discussions of CSA cases in national media, parliament and with a resultant low rate of prosecution throughout the twentieth century. Similarly, Chapter 5 emphasises the significant impact of penal welfarism in Australia on First Nations children and their families. Australia shared Ireland's overriding concern with the protection of sexual morality rather than of the rights of individual children.[10] The result, again, was a stigma against victims of CSA as threats to the moral purity of the family, society and state. It would have

[7]Ibid, pp 133–134.
[8]Ibid, p 54.
[9]Ibid, p 55–57.
[10]Ibid, p 115.

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been interesting to see further exploration of the impact of CSA on national identity and self-image in Chapter 3 on England and Wales. A failure to address NRCSA across a range of contexts in England and Wales aligns with a broader trend of not addressing non-recent violence, such as imperial era violence, which may attach state responsibility for the UK. For instance, in discussing the UK High Court decision regarding allegations of systematic abuse and torture in Kenya during the Mau Mau uprising in the 1950s,[11] Jennifer Balint suggested that while the case offered the potential for a new constitutive moment affecting 'how the British Empire is collectively remembered and discussed',[12] she concludes that 'the absence of a broader public appreciation of the structural nature of these harms – as constitutive of Empire, not exceptional to it' such cases will fail to impact a broader interrogation of imperial era violence.[13]

Part II evaluates several legal responses to NRCSA, including the role of the criminal trial (Chapter 7), tort law (Chapters 8 and 9), public inquiries (Chapter 10) and state reparations (Chapter 11). Part II identifies the potential to conceptualise justice for survivors of NRCSA in terms of 'kaleidoscopic justice', as developed in the work of Clare McGlynn and Nicole Westermarland,[14] while also acknowledging the conception of procedural justice from Anne-Marie McAlinden and Bronwyn Naylor and the understandings of 'justice needs' and 'justice interests' from Kathleen Daly and Patricia Lundy respectively.[15] While it is valuable to demonstrate the range of conceptions of justice interests and concepts that can inform a survivor-led approach to NRCSA, the book may have benefited from further and more particular articulation of whether and how these conceptions of justice inform the subsequent chapters of Part II.

Chapter 7 considers the tension in criminal trials for NRCSA between the desire for accountability for victims and the need to maintain a fair trial in accordance with due process. The chapter notes the use of limitation periods for child sexual offences, especially carnal knowledge, but that generally fair trial considerations are framed as jeopardised by the existence of a delay in reporting. The chapter offers a valuable account of judicial directions on delay and on trials involving multiple victims in each jurisdiction, with the authors concluding 'there is now in all three countries a strong working presumption that the trial process is equipped to deal with the problems posed by delay. This shift is reflective of increased understanding of the importance of accountability and the effects of trauma on CSA victims.'[16] However, the authors remain concerned that juries are likely to overly scrutinise victims' credibility while not receiving any or adequate directions on the effective reasons for the delay. Largely absent from Chapter 7 is discussion of whether and how alternative justice responses to sexual violence, discussed at the start of Part II, could apply across the three jurisdictions considered,[17] to reform or re-imagine the application of criminal law to NRCSA.

Chapters 8 and 9 address the role of tort law in creating accountability for NRCSA. Chapter 8 usefully contrasts the approaches taken in each jurisdiction with regard to the statute of limitations, which impacts significantly on the capacity of victims to bring cases for NRCSA. In Australia, several states and territories have enacted radical reforms that have effectively abolished limitation periods for NRCSA with retrospective effect. In contrast, Ireland reformed its statute of limitations based on a 'disability' approach, whereby a litigant is disabled from pursuing a case due to a psychological injury arising from the act of the alleged perpetrator. In addition, a one-year window for non-recent cases

[11] *Mutua & Others v The Foreign and Commonwealth Office* [2012] EWHC 2678 (QB) (5 October 2012).

[12] J Balint 'The "Mau Mau" legal hearings and recognizing the crimes of the British colonial state: a limited constitutive moment' (2016) 3 Critical Analysis of Law 261 at 264–265.

[13] Ibid, at 265.

[14] C McGlynn and N Westmarland 'Kaleidoscopic justice: sexual violence and victim-survivors' perceptions of justice' (2019) 28 Social & Legal Studies 179.

[15] A-M McAlinden and B Naylor 'Reframing public inquiries as "procedural justice" for victims of institutional child abuse: towards a hybrid model of justice' (2016) 38 Sydney Law Review 277; Daly, above n 1; P Lundy '"I just want justice": the impact of historical institutional child-abuse inquiries from the survivor's perspective' (2020) 55 Éire-Ireland 252.

[16] Ring et al (n 6) p 164.

[17] A Powell et al *Rape Justice: Beyond the Criminal Law* (Palgrave Macmillan, 2015).

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outside of this test arose in the year 2000 in response to emergent NRCSA crises. The UK Limitation Act 1980 enables judicial discretion to allow non-recent cases to proceed, but it has been interpreted in a largely restrictive fashion. The authors correctly identify that the focus on psychological injury as a reason for delay in limitation period litigation eschews judicial consideration of other non-psychological reasons for delay in NRCSA cases, such as societal pressures and denial of CSA. Although the role of limitation periods may seem like a narrow and discrete topic, further analysis is warranted to assess whether limitation periods effect a separation of survivors of NRCSA from contemporary harms, and unduly limit law's ability to address non-recent violence.

Chapter 9 gives an effective account of the pathways and challenges of organisational liability for NRCSA in tort law, such as non-delegable duties, vicarious liability and direct negligence. In the particular cases of NRCSA, the chapter acknowledges the injustice of attempted suits against the unincorporated associations that form the legal identity of many religious orders. Australia has been the most progressive of the jurisdictions studied here, with reform of the legal basis for civil suit against such defendants. However, while the legal basis for organisational responsibility has expanded in recent decades, there remain significant challenges in practice, with a large number of NRCSA cases settling in each of the jurisdictions examined.[18]

In their assessment of public inquiries and reparations, the authors draw on theories of transitional justice, assessing whether and how NRCSA was framed in each jurisdiction as a 'historical' problem rather than part of an ongoing problem for survivors and society. Chapter 10 is significant in offering an in-depth comparison of three major inquiries into CSA: the Irish Commission to Inquire into Child Abuse (CICA), the Australian Royal Commission into Institutional Responses to Child Abuse (Royal Commission) and the Independent Inquiry into Child Sexual Abuse of England and Wales (IICSA). The chapter offers a helpful overview of the establishment, processes, and outcomes of each report, with the final report of the IICSA inquiry issued after the publication of this book.

The chapter helpfully contrasts the differences between the inquiries: CICA addressed only non-recent abuses, whereas the Royal Commission and IICSA address both non-recent and contemporary harms. CICA addressed industrial and reformatory schools only, whereas both the Royal Commission and IICSA have broad mandates involving a range of both state and non-state institutions. All of these inquiries make claims to pursue truth for survivors and to engage in a healing or therapeutic function. However, it is important to acknowledge the limited empirical assessment of this claim in existing literature. Some of the structural limitations discussed in the chapter, such as limited survivor ownership of the process, a lack of naming names of alleged abusers, and confrontational attitudes from some religious orders impugned, may have impacted on the purported therapeutic benefits of the inquiry processes.[19] Although beyond the scope of this book, it remains deeply uncertain empirically, whether survivors enjoy meaningful benefits from engaging with inquiries and whether those benefits are sustained after the initial engagement.

Chapter 11 offers a holistic account of the reparative measures undertaken by states in addressing NRCSA. It examines both financial and non-material forms of reparation in each jurisdiction and notes the limited effectiveness and indeed re-traumatisation caused by such schemes, particularly in the Irish experience. The UK IICSA inquiry has since recommended a national redress scheme for victim-survivors of CSA in England and Wales. Any such scheme would benefit from the cautionary tale articulated in this chapter, especially the clear need to listen to and fully address 'survivors' ongoing material and other needs'.[20]

[18]Royal Commission into Institutional Responses to Child Sexual Abuse *Redress and Civil Litigation Report* (Royal Commission into Institutional Responses to Child Sexual Abuse, 2015) p 112 https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_redress_and_civil_litigation.pdf (last accessed 18 October 2023); A Jay et al 'The Anglican church safeguarding in the Church of England and the Church in Wales' (IICSA) p 64.

[19]K Wright 'Remaking collective knowledge: an analysis of the complex and multiple effects of inquiries into historical institutional child abuse' (2017) 74(10) Child Abuse & Neglect 10.

[20]Ring et al (n 6) p 290.

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Chapter 12 concludes the book by emphasising the ambivalent nature of the legal responses to NRCSA evidenced in each of the jurisdictions studied.[21] The conclusion offers the significant insight that the practice in each jurisdiction has involved adult survivors advocating on behalf of their child selves, with the result that 'the full experience of the child their embodied vulnerability, powerlessness, dependence on others and the full impact of the abuse on them as a child is never, can never, be fully recognised by the law in the context of NRCSA'.[22] As a result, the legal responses considered can never adequately address the survivors suffering in those years when they alone carried the burden of abuse. The authors conclude that the justice responses to date have delivered only partial accountability and recognition for survivors, across each of the mechanisms considered in Part II. Regrettably the authors note 'it is difficult to discern exact reasons for this ambivalence' across the justice responses. The reasons for state and non-state actors' resistance to justice for survivors of NRCSA are an area of significant interest to survivors who have been frustrated by the failure to prioritise their interests and concerns. Exploring and speculating whether such ambivalence results from financial, political, and legal constraints or other reasons would have been a highly valuable element of the book's conclusion, given the breadth and depth of the authors' collective expertise.

The book is significant in its treatment of NRCSA not merely in institutional settings, with a typical emphasis on religious and especially Catholic institutions, but also in demonstrating the continuity of harms present in NRCSA in familial and kinship settings, such as in incest cases. This expansive approach eschews the typical focus on state- and religious organisation-run institutions and harms therein and re-introduces the problematised family into the literature in this space. The book offers an extensive and detailed analysis of the complex range of processes involved in addressing NRCSA in Ireland, England and Wales and Australia. In doing so, it offers a compelling insight into the challenges that remain for states and survivors alike in seeking to use law to address questions of justice for non-recent harms. By synthesising detailed comparative accounts with an insightful account of shared and continued challenges in the field, the book is likely to remain a key reference for many years.

[21]C Smart 'A history of ambivalence and conflict in the discursive construction of the "child victim" of sexual abuse' (1999) 8 Social & Legal Studies 391.

[22]Ring et al (n 6) p 307.

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