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## Editors' Introduction: Toward Transitional Justice in Ireland? Addressing Legacies of Harm

We were locked in and there was absolutely no way of getting out.

We were made to work even if we were very ill, as I was. No excuses were ever accepted.

[My son] was wrenched from my breast by one of the nuns while I was feeding him and taken away for adoption..... At no time did I give my consent to my son's adoption.

I do not even know whether he was buried in a coffin. .... There was never even a kind or sympathetic [word] spoken to me.

I have found it incredibly difficult to access information about my childhood, my mother, and my siblings .....I was made to feel that I was a nuisance.

Throughout the time I spent researching my birth family, I found the authorities from whom I sought assistance obstructive and unhelpful.

Everyone has the right to know their name; the right to know their mother's name.<sup>1</sup>

1. Maeve O'Rourke, Claire McGettrick, Rod Baker, Raymond Hill, et al., *CLANN: Ireland's Unmarried Mothers and Their Children: Gathering the Data: Principal Submission to the Commission of Investigation into Mother and Baby Homes* (Dublin: Justice for Magdalenes Research, Adoption Rights Alliance, Hogan Lovells, 15 Oct. 2018), par. 1.47, 1.225, 1.102, 1.173, 3.58, 3.66, 3.72, <http://clannproject.org/clann-report>, archived at <https://perma.cc/38CR-YLT2>. The CLANN project is a joint initiative between the Adoption Rights Alliance (ARA) and Justice for Magdalenes Research (JFMR) in conjunction with global law firm Hogan Lovells. The project provided free witness-statement drafting assistance to people giving evidence to Ireland's Commission of Investigation into Mother and Baby Homes. Witnesses were given the option to share their anonymized testimony with JFMR and ARA for inclusion in a public group report available on the CLANN website.

The testimony above comes from the CLANN report, an evidence-gathering and advocacy project that facilitated survivor participation in the Republic of Ireland's ongoing Commission of Investigation into Mother and Baby Homes and Certain Related Matters. We open this special issue of *Éire-Ireland*, entitled *Toward Transitional Justice in Ireland? Addressing Legacies of Harm*, with survivors' voices in order to acknowledge that the volume is concerned with the experience of hundreds of thousands of individuals who were born or grew up in Ireland, and of their families across multiple generations, who have been too frequently ignored. As academics and members of the Justice for Magdalenes Research (JFMR) advocacy group, for the past decade we have endeavored to place the motto of survivors, "nothing about us, without us," at the center of our research and activism on the subject of Ireland's class, race, disability, and gender-based abuses, so evident in Irish carceral institutions.<sup>2</sup> We have attempted always to ensure that our work is led by survivors' experiences, perspectives, and critiques, and we have consciously continued such practice in putting this special issue and the conference that preceded it together.

The essays in this collection originated in the conference *Towards Transitional Justice: Recognition, Truth-Telling, and Institutional Abuse in Ireland*, held at Boston College in early November 2018.<sup>3</sup> Over two days scholars, policy-makers, abuse survivors, people affected by adoption, artists, and advocates came together to consider the nature of both the republic's and Northern Ireland's responses to Magdalen laundries, county homes, mother-and-baby homes, child residential institutions, child foster care, and the closed, secret, and coercive adoption system. What was clear at the conference, and what is evident from the contributions to this special issue, is that state-led efforts to address this legacy of abuse have been inadequate, and as a result the harms experienced are not "historical" but continuing.

2. See Justice for Magdalenes Research, *Justice for Magdalenes Research: A Resource for People Affected by and Interested in Ireland's Magdalene Institutions*, n.d., <http://jfmresearch.com>.

3. See Boston College Institute for the Liberal Arts, "Towards Transitional Justice: Recognition, Truth-Telling and Institutional Abuse in Ireland," *Boston College Institute for the Liberal Arts*, 1–2 Nov. 2018, <https://www.bc.edu/bc-web/academics/sites/ila/events/towards-transitional-justice.html>, archived at <https://perma.cc/8QY4-KR8E>.

Over the past twenty years the Irish state has initiated a plethora of inquiries into twentieth-century institutional and gender-based abuses, including the Commission to Inquire into Child Abuse (resulting in the so-called Ryan report, 2009), the Interdepartmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries (resulting in the McAleese report, 2013), the Surgical Symphysiotomy Ex-Gratia Payment Scheme inquiry (resulting in the Harding Clark report, 2016), and the ongoing Commission of Investigation into Mother and Baby Homes and Certain Related Matters (set to produce the Murphy report, forthcoming in 2020).<sup>4</sup> However, these inquiries have frequently hampered or excluded other avenues of accountability. They have largely operated in private. Survivors and relatives of the deceased, and frequently also the police, have been prohibited from accessing the inquiries' archives. The director of public prosecutions brought charges against only one person in relation to the contents of the Ryan report.<sup>5</sup> Neither the Magdalen laundries nor the mother-and-baby homes have been the subject of criminal cases. Survivors' access to the civil courts has been stymied by myriad procedural barriers, a lack of access to relevant evidence, and the unavailability of affordable legal aid. The state has conditioned offers of financial redress to survivors upon their silence and/or their agreement not to pursue wrongdoers in court. The state, furthermore, still denies adopted people statutory entitlements to their own identity and early life and adoption files. Transitional justice, we suggest, can contribute to redressing these deficits.

The United Nations defines transitional justice as “the full range of processes and mechanisms associated with a society's attempts

4. See also the Northern Ireland Historical Institutional Abuse Inquiry, *Hart Report*, 2017, <https://www.hiainquiry.org/historical-institutional-abuse-inquiry-report-chapters>.

5. UN Committee Against Torture, *Information Received from Ireland on the Implementation of the Committee's Concluding Observations* (UN Doc CAT/C/IRL/CO/1/Add.1, 25 April 2013), par. 13–14, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2fCO%2f1%2fAdd.1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2fCO%2f1%2fAdd.1&Lang=en); UN Committee Against Torture, *Second Periodic Reports of States Parties Due in 2015: Ireland* (UN Doc CAT/C/IRL/2, 20 Jan. 2016), par. 224, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2f2&Lang=en).

to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation.”<sup>6</sup> Scholars frequently describe a transitional-justice approach as comprising four principles or pillars: truth-telling, accountability, redress and reparation, and guarantees of nonrecurrence.<sup>7</sup> Operating simultaneously, these four elements are said to provide a holistic method of responding to large-scale and widespread injustice.<sup>8</sup> Transitional-justice approaches have been deployed in numerous countries seeking to move from a situation of mass violence and human-rights violations (engendered, for example, by civil war, apartheid, or violent insurgency) to the establishment of robust democratic institutions and processes.<sup>9</sup> Significant academic attention has been paid to the potential of transitional-justice measures in Northern Ireland as a way to come to terms with the impacts of the three-decades-long Troubles.<sup>10</sup> More recently, and with great relevance to the subject matter of this volume, transitional-justice scholarship has started to consider how the model could be applied to systematic institutional abuse and injustice in settled democracies, including, for example, the removal of indigenous children from their families and further mistreatment in residential institutions in Canada and Australia.<sup>11</sup>

6. UN Secretary General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General* (UN Doc. S/2004/616, 23 Aug. 2004), 4. See also UN Office of the High Commissioner for Human Rights, *Transitional Justice and Economic, Social, and Cultural Rights* (UN Doc. HR/PUB/13/5, 11 April 2014).

7. There is an extensive scholarly literature addressing transitional justice. See, for example, Ruti G. Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000); Pablo De Greiff, “A Normative Conception of Transitional Justice,” *Politorbis* 50:3 (2010): 17–29; Juan E. Méndez and Catherine Cone, “Transitional Justice,” in *Routledge Handbook of International Human Rights Law*, ed. Scott Sheeran and Nigel Rodley (London: Routledge, 2013), 761.

8. Méndez and Cone, “Transitional Justice,” 761.

9. Transitional-justice approaches have been utilized in South Africa, Chile, Argentina, and Guatemala, for example.

10. See, for example, the array of articles addressing Northern Ireland in the *International Journal of Transitional Justice*, published by Oxford University Press.

11. See Nicola Henry, “From Reconciliation to Transitional Justice: The Contours of Redress Politics in Established Democracies,” *International Journal of Transitional Justice* 9:2 (2015): 199–218; Rosemary Nagy, “The Truth and Reconciliation Commission of Canada: Genesis and Design,” *Canadian Journal of Law and Society* 29:2 (2014): 199–217; Kathleen Daly, “Conceptualizing Responses to Institutional Abuse of Children,” *Current Issues in Criminal Justice* 26:1 (2014): 5–29; Katie Wright,

At the center of our conference were a number of questions: What, if anything, might the concept of transitional justice offer with regard to Ireland's history of institutional and adoption-related abuse? Can it act as a lens to help us better understand this abuse and its legacy, including the state's (non)responses to survivors' needs and demands? Is it an avenue by which alternative framings and responses to the past could be designed? Asking these questions provoked a series of further ones: What is it that Ireland still needs to learn about its treatment of women, children, and others marginalized by poverty, sexism, racism, ageism, and ableism both in the past and in the present? What do the methods with which Ireland has attempted to deal with its past tell us about the state's current approach to power, dependency, and incarceration? What are the implications of recent state-sponsored investigations into institutional abuse for contemporary Irish society, including children in foster care, young adults leaving state residential care settings, older people in nursing homes, psychiatric patients, people in direct provision, and those in prison? What can Ireland learn from transitional-justice responses to similar recent histories and contemporary problems in other jurisdictions? Do transitional-justice processes have the potential to assist Ireland in building a human-rights infrastructure, thereby helping to guarantee nonrecurrence of previous failures? The essays in this special issue formulate responses to these questions from a variety of perspectives, disciplines, and methodologies.

A key aspiration in advancing this special issue was to set an innovative agenda for Irish Studies by proposing that academics studying Ireland (both North and South) could benefit from using the framework of transitional justice as an evaluative lens to understand and address not just the suffering caused by colonial sectarian conflict but also the violence and civil-liberties violations wrought by post/colonial theocratic regimes. In using the slashed term "post/colonial," we refer to the differing experiences of colonial settlements on either side of the Irish border whereby the Irish Free State, later the Republic of Ireland, won independence from the United Kingdom just less than a hundred years ago and the six counties of Northern Ireland

Shurlee Swain, Kathleen McPhillips, "The Australian Royal Commission into Institutional Responses to Child Sexual Abuse," *Child Abuse & Neglect* 74 (Dec. 2017): 1-9.

currently operate under a twenty-two-year-old peace settlement that is facing a challenging time as the United Kingdom leaves the European Union. Widespread across both jurisdictions, systems of institutional confinement and forced family separation functioned for most of the twentieth century to effect social control over tens of thousands of vulnerable citizens—approximately one percent of the Republic’s population in 1950—according to a recent study.<sup>12</sup> Codes of silence, secrecy, and shaming related to social reproduction in general, and female sexuality in particular, also operated and persist today.

As the “decade of centenaries” draws to a close in 2022, there will be a focus on the violence of the War of Independence, Civil War, and Partition.<sup>13</sup> These centenaries offer an opportunity to reflect on the other systematic forms of violence and abuse that have marked our island and cultures during the past one hundred years. The articles in this special issue—representing diverse and interdisciplinary academic fields, including law, international human rights, sociology, philosophy and ethics, theology, literature, history, social work, anthropology and heritage studies, and creative writing—consider whether the principles of transitional justice might guide both the Republic of Ireland and Northern Ireland through transition, from being societies traumatized by violent conflict and severe social oppression to being more stable societies that embrace diversity and address socioeconomic disadvantage.<sup>14</sup> And so the coeditors of this special issue suggest that the Republic of Ireland, and not just Northern Ireland, might consider itself to be a state in need of transitional-justice measures. The essays that follow consider whether transitional justice holds the potential to mobilize a shift away from pervasive gendered and class injustice, and a history rooted in the privatization of educational, health, and social-welfare services and their administration by the Roman Catholic church in particular. The authors’ contributions examine whether transitional justice can provide a route to dignified treatment of survivors and the genera-

12. See Eoin O’Sullivan and Ian O’Donnell, eds., *Coercive Confinement in Ireland: Patients, Prisoners, and Penitents* (Manchester: Manchester University Press, 2012), 7.

13. See Department of Culture, Heritage, and the Gaeltacht, *Decade of Centenaries*, 2012–22, <https://www.decadeofcentenaries.com>.

14. Katherine O’Donnell, “Let’s Listen Attentively to Survivors of Magdalene Laundries,” *Irish Times*, 5 June 2018.

tions of their families that continue to suffer the effects of our abusive past.

Two final questions informed our approach to the conference and this issue of *Éire-Ireland*. How do we as academics engage with the voices of institutional-abuse survivors? In other words, how should our scholarship respond to their testimony? We include a compilation of survivor testimony to ensure that readers also grapple with their experiences as they engage the academic content. And what are the roles that the humanities and social sciences might play in imagining a flourishing Ireland and facilitating its emergence? Our contributors provide a complex series of responses to using transitional justice as a lens by which to study Ireland, some pointing to the occlusions that might occur and the risks that an optimistic assessment of the framework might entail. Transitional justice has generally been considered the work of legal scholars and centers for the study of human rights. With these essays we seek to set a fresh agenda for the field of Irish Studies that would bring studies in the humanities (Burke, Zappone, McAtackney, Pine et al., Smith), social sciences (Lundy, Garrett, McGettrick), law (Ní Aoláin, Enright and Ring, Smith and Duff, Gallen) and the creative arts (Lowry, Palmer) into conversation around a new set of coordinates. In particular, concepts of truth-telling and guarantees of nonrecurrence connect to the work of many colleagues in the wider Irish Studies community, with their focus on the role of testimony gathering, storytelling, life-writing, oral history, access to records, archival research, genealogy, survivor culture, memorialization, heritage, curriculum design, and education. We also see a pedagogical imperative in transitional justice that has the potential to reinvigorate the work we do in our respective classrooms. Teaching students about Ireland's treatment of the socially marginalized combats contemporary complacency and creates a bulwark that, we hope, will help to ensure nonrecurrence of such harms in the future. Furthermore, in rooting our pedagogies in new interdisciplinary approaches oriented toward social justice for all, we will continue to offer dynamic rationales for the value of a liberal-arts education.<sup>15</sup>

15. In the 2018 fall semester James Smith offered an undergraduate elective course at Boston College entitled "Outcast Ireland: Paupers, Penitents, Patients" in which the students researched and designed poster boards for presentation at the Towards Transitional Justice conference in November. See Mary Cobble, Liza Frost,

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Isabelle Morford, Haley Walker, and Oliver Whitters, "How Do I Know Who I Am? An Analysis of the Ramifications of Ireland's Adoption Policies" (poster session, 2018, <http://hdl.handle.net/2345/bc-ir:108343>); Tara Coffey, Meg Dolan, Isabel Rivera, and Daniel Walsh, "Narrating Neglect at Artane Industrial School" (poster session, 2018, <http://hdl.handle.net/2345/bc-ir:108345>); Meghan Dougherty, Sophia Fox, Megan Kelly, and Sydney Walters, "Making Visible the Truth of the Galway Magdalen Laundry," (poster session, 2018, <http://hdl.handle.net/2345/bc-ir:108346>); Audrey Ballard, Kathleen Flaherty, Taylor Puccini, and Jessica Rowe, "Confronting Compartmentalization: Bessboro Mother and Baby Home" (poster session, 2018, <http://hdl.handle.net/2345/bc-ir:108348>); Emily Lyons, "House of the Good Shepherd, Boston, MA" (poster session, 2018, <http://hdl.handle.net/2345/bc-ir:108344>).