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**Conceptualising and Categorising Child Abuse Inquiries:  
From Damage Control to Foregrounding Survivor Testimony  
Shurlee Swain<sup>1</sup>, Katie Wright<sup>2</sup>, Johanna Sköld<sup>3</sup>**

**Abstract** Testimony before inquiries into out-of-home care that have taken place in many countries over the last twenty years has severely disrupted received ideas about the quality of care given to children in the past. Evidence of the widespread abuse of children presented before recent inquiries internationally gives rise to the question: why didn't we know? Part of the answer lies in the changing forms and functions of inquiries, whose interests they serve, how they are organised and how they gather evidence. Using as a case study, a survey of historical abuse inquiries in Australia, this article explores the shift to victim and survivor testimony and in so doing offers a new way of conceptualising and categorising historical child abuse inquiries. It focuses less on how inquiries are constituted or governed, and instead advances an historically contextualised approach that foregrounds the issue of who speaks and who is heard.

## **Introduction**

Inquiries into historical institutional child abuse have become a global phenomenon, with approximately twenty Western democracies across Europe, the United States, Canada, New Zealand and Australia having established official inquiries since the 1980s. The number of inquiries has been progressively rising, with an increasing number set up in recent years. By the mid-2010s, for example, several major inquiries were underway across the British Isles, the largest being the statutory inquiry covering England and Wales, established in the wake

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of the Jimmy Savile sexual abuse scandal. Separate inquiries were also set up to examine historical child abuse in Northern Ireland, Scotland and Jersey. Around the same time a major royal commission in Australia began investigating institutional responses to child sexual abuse, while inquiries across the Nordic countries and other parts of Europe were uncovering past abuses in residential children's homes and foster care.

In recent years, research has highlighted the international dimension of this phenomenon, with various studies exploring the rise of historical abuse inquiries and ways of categorising and comparing them over time and across jurisdictions.<sup>1</sup> For example, Sköld's comparative examination of institutional child abuse inquiries in Ireland, Sweden and Denmark highlights a range of similarities, including the active role played by care leavers in seeking recognition and reparation, the importance of the media in generating public concern, and the establishment of official inquiries as a key government response to political pressure to 'do something'. Key differences include the periods under investigation, the numbers of witnesses who gave evidence, the legal status of various inquiry forms, and the investigatory mechanisms they employ.<sup>2</sup> Comparative observations such as these, along with existing attempts to classify public inquiries more generally, provide important starting points for developing more complex understandings of the nature of historical abuse inquiries and their significance in the contemporary social and political landscape.

While there has been growing scholarly attention to historical institutional child abuse inquiries from a range of disciplinary and interdisciplinary perspectives, to date there has been only limited attention to spatial and temporal context and issues of categorisation. This paper argues that consideration of these matters is critical to furthering understanding of the role of commissions of inquiry at a time when there is an increasing propensity for governments to employ them as a political mechanism. That inquiries into historical institutional child abuse have now been established in a range of judicial and welfare systems across many nations calls for attention to their form, function, and effects. Put

another way, there is a need to examine *what inquiries are* and *what they do*. A central aim of this article is therefore to tease out the complexity of inquiries as means of recognising and investigating historical abuse. It presents a case study of the long history of inquiries into child welfare in Australia and how they have changed over time, in order to more fully understand the phenomenon of inquiries and their outcomes, both in the past and in the present.

The article looks first to literature exploring the form and function of inquiries and existing attempts to conceptualise and classify them. While the primary focus is historical institutional child abuse inquiries, examining the broader question of what official government inquiries *are* and what they *do*, requires that the net be cast more widely, to capture critical features of inquiries as an instrument of government. Key characteristics of inquiries across a range of jurisdictions are noted. However, the focus is on inquiries in Commonwealth countries, which follow the British inquiry tradition, and on Nordic countries, to illustrate an alternative inquiry model. Commonalities and differences both within and across nations are considered before examining in greater detail issues of classification. Drawing on a survey of Australian inquiries into child welfare since the nineteenth century and a new project mapping inquiries globally, the remainder of the article is concerned with charting shifts over time in the form and function of inquiries as a basis for classification.<sup>3</sup> An historically grounded analysis reveals differences in investigative processes and how inquiries have been constituted. Most importantly, though, it shows that in conceptualising inquiries, context matters. Over time there has been a broad shift in what inquiries into child welfare *do*, based on how who is authorised to speak and the legitimacy accorded to different types of witnesses. Critically, what the analysis reveals is that once the testimony of victims and survivors became central to inquiry processes, both form and focus shifted, reversing past understandings of the operations and outcomes of out-of-home care.

### **Towards a classification of inquiries**

Official government inquiries have a long history. They have been an instrument of state administration since the eleventh century in UK, the seventeenth century in Sweden and Finland, and the nineteenth century in colonial administrations such as Australia, Canada, and New Zealand.<sup>4</sup> Inquiries are valued by governments for a variety of reasons. Chief amongst these are their fact-finding functions, their ability to aid in reaching consensus between conflicting interests, their capacity to investigate issues of major social or political concern, and their role in analysing complex policy areas and making recommendations for reform.<sup>5</sup> The public often calls for or welcomes inquiries, particularly in the wake of accidents, disasters or the exposure of significant and systemic wrongdoing. Yet there is often an accompanying scepticism. The establishment of inquiries may be seen as a tactic by governments to avoid or delay action, to pacify vocal interest groups or as a waste of public resources. Inquiries are therefore complex and often fraught. They take many different forms and focus on a wide range of issues. Yet they have an important feature in common: their primary objective is to advise government how to confront social problems or respond to major public scandals by developing appropriate policy responses.<sup>6</sup>

The most powerful and prestigious inquiry type in Commonwealth countries is the royal commission, a form of public inquiry with legal powers of investigation, established to examine issues of major public importance. While its nomenclature indicates that it is technically authorised by the Crown, a number of other inquiry types also have legislative powers that enable them to compel and cross-examine witnesses, to subpoena documents, and to protect those who give evidence.<sup>7</sup> By contrast, many non-statutory forms of inquiry depend on the cooperation of witnesses and the organisations under investigation, rather than resting on coercive legislative powers. Different governments take different approaches to the use of inquiries; some favour them – typically reformist governments – while others avoid them.<sup>8</sup> For example, in less than three years, the Whitlam Labor Government (1972-1975) in Australia established 70 non-statutory inquiries and 13 royal commissions.<sup>9</sup> By contrast, from the following decade, it took almost thirty years (1987-

2016) for the same number of royal commissions to be established at the Commonwealth level.

In the Nordic countries, such investigations are typically labelled government commissions of inquiry. Scholars addressing Swedish inquiries emphasise their deliberative function as an arena for political negotiation and consensus-making along with their fact-finding and policy-making features. There are two different models of inquiry: the special commission led by one appointed chairman – most often with a certain expertise, and the parliamentary committee representing both government as well as opposition parties and interested organisations. By contrast to royal commissions, which are established infrequently, Swedish government commissions, and their Nordic counterparts, form part of the everyday operation of the state. They are characterised by their large numbers; in recent decades 200-300 commissions have typically been underway in Sweden at any given time. Rather than being established exclusively to deal with “extraordinary and pressing matters”, commissions of inquiry in the Nordic countries play a central role in governance and the law-making processes, and in Sweden at least, virtually all laws are prepared through a government commission of inquiry. Moreover, their deliberative function means that commission reports are distributed to all affected authorities and interested organisations for consultation, and all reports are made public.<sup>10</sup>

The so-called remiss-system, which is a long-established praxis of governance, albeit not inscribed in law, means that any citizen can comment upon inquiry reports and have their opinions filed. The record of comments is considered in the government’s writing of a bill, which is debated in the parliament before it can be voted into a law. Trägårdh has described the remiss-system as an open feedback cycle which “not only serves to alert the commissions to ideas, information and political opinions they might otherwise have missed or neglected; it also legitimises the final policy or law by giving a hearing to a maximum number of views.”<sup>11</sup> However, the fact-finding and evidence-gathering work of a

governmental commission of inquiry is not set up in a public matter in the same way as Commonwealth royal commissions and other inquiries, for example, through public hearings. Rather, they are guided by the principle of public access to official records, which is a fundamental characteristic of Swedish law. This means that any received or dispatched document must be made available for anyone to read if it is not classified. Hence, there must be extraordinary circumstances for a governmental commission of inquiry to gather/generate evidence that will not be made publicly available. In the case of the Inquiry into the Abuse and Neglect of Children in Institutions and Foster homes operating 2006-2011, it was inscribed in the Privacy Regulation Act that no information about any individual witnesses' personal circumstances would be disclosed to the public.<sup>12</sup>

As in the Nordic countries, there are various types of inquiries in Australia and other Commonwealth countries that also play an important part in the everyday operation of the state. Parliamentary inquiries, for example, share many functions with other types of inquiries. They differ from independent ad hoc bodies, such as royal commissions, insofar as they are constituted from within government and typically have a more limited timeframe, budget and public prominence. In Australia, these inquiries operate under a committee system in one or both Houses of Parliament and members and witnesses are protected by parliamentary privilege.<sup>13</sup> They typically conduct meetings, gather evidence, hold public hearings, accept written submissions, and issue publicly available reports. These inquiries shape legislation and have an important role in raising awareness of matters of importance for the community. At times, these relatively small and contained inquiries influence the establishment of larger public inquiries. In Australia, for example, two Senate Affairs References Committee inquiries in the 2000s, one into child migration schemes and another into out-of-home care, identified a range of matters that were subsequently examined in the Royal Commission into Institutional Responses to Child Sexual Abuse.<sup>14</sup>

The wider literature on public inquiries within the Commonwealth suggests their main function is to “learn lessons” from the past to prevent future failures.<sup>15</sup> On the other hand, the Nordic government inquiry tradition could be said to underline the comparative nature of learning lessons, not necessarily in a temporal sense in looking at the past to inform the future, but rather by looking beyond its national borders. This was particularly the case during the first half of the 20<sup>th</sup> century, when avoiding the mistakes of more advanced economies was a central aim. Over the second half of the 20<sup>th</sup> century the evolution of commissions of inquiry saw them become key mechanisms for the generation of state expertise.<sup>16</sup> A more recent development is also discernible. The parliamentary committees in Sweden and Finland have become less frequent in favour of special commissions and to some extent government commissions of inquiry in Finland and Denmark have been replaced by commissioned research, which in effect means that much work of inquiries is now undertaken by universities and other investigative bodies. As a result, the deliberative function has diminished.<sup>17</sup> This has affected the operation of recent inquiries into historical institutional child abuse in Finland and Denmark, where they have been undertaken by research teams in university and museum contexts respectively.

The existence of different inquiry types – from royal commissions and commissions of inquiry to tribunals, taskforces, parliamentary inquiries, reviews and working parties – points to the difficulty of distilling what official government inquiries, broadly defined, *are* and what they *do*. An influential classification of inquiries, developed by Scott Prasser, defines a public inquiry as a non-permanent, discrete and independent organisational unit appointed by the executive government with clear publicly stated terms of references. He notes that inquiry members are recruited from outside government and there is typically a preference for judges, indicating the legalistic framework of many inquiry forms. In terms of key functions, Prasser distinguishes between inquisitorial and investigatory inquiries and inquiries with an advisory function that focus on policy development.<sup>18</sup> While this taxonomy provides a useful delineation of some key attributes, it has limitations that stem from a



classification based on inquiry form, for example, the extent to which royal commissions vis-à-vis parliamentary inquiries may be deemed *public*. Parliamentary inquiries are excluded from Prasser's definition of public inquiries. Yet many are distinctly public in their operation, with hearings open to all, and submissions and reports widely available.<sup>19</sup>

Certainly, the legal status of an inquiry is important. In Australia, royal commissions include some procedural elements that are similar to a court of law. Witnesses are required to take an oath or affirmation and legal sanctions can be applied for the failure to produce documents or for a person called before the commission if they fail to appear. However, royal commissions are not bound by the same rules of evidence and while their findings may lead to prosecutions, this occurs not through the powers of the royal commission itself, but through the referral of illegal activity to law enforcement authorities. Parliamentary inquiries are distinct from royal commissions and other statutory inquiries, insofar as they do not have the same coercive powers. These distinctions are clearly important for legal definitions of inquiries. However, in understanding their wider social functions, it is suffice to say that royal commissions have a social and legal status that positions them as the most powerful inquiry type in Australia. Yet other inquiry forms are also important, and the impact of an inquiry is not necessarily determined by its legislative base. As elaborated below, an historical perspective can shed light on how changing characteristics of inquiries determine how problems of child abuse are framed, understood, and represented over time.

Prasser's taxonomy is not the only attempt to develop a classification system of inquiries. Focusing on inquiries into the abuse of children in residential care, Corby and colleagues, for example, identify three main types of government inquiries: administrative inquiries; fact-finding inquiries; and investigative inquiries.<sup>20</sup> The function of administrative inquiries is to provide a means of redress or grievance, adjudication of disputes, and recognition of an individual's rights – they are generally swift, cost-effective and not overly legalistic. Fact-

finding inquiries, by contrast, are part of the policy-making processes of government, carried out through various types of statutory and non-statutory inquiry forms – they are flexible, impartial and independent, but often lengthy. They have a variety of functions, including to discover new information, legitimise existing policy, and investigate system failures. Investigative inquiries also examine failures and scandals but have a different role than other types of inquiries in ‘opening up the policy arena to a wider than usual range of voices’.<sup>21</sup>

Even broader is Jay Makararenko’s description of Canadian inquiries, which is also applicable to other countries. It states that ‘an inquiry is an official review, ordered by government, of important public events or issues. Its purpose is to establish the facts and causes of an event or issue, and then to make recommendations to the government’.<sup>22</sup> A key issue to note is that a public inquiry cannot implement its proposals; it can only make recommendations to the executive government.<sup>23</sup> While this definition is broad enough to cover inquiries in both Nordic and Commonwealth countries, it needs to be extended to encompass the ways in which the approaches and models of such inquiries have developed and changed over time. The most striking of these changes is the elevation of the status of victims and survivors and the way evidence is gathered. Survivor testimony, largely missing from earlier inquiries, has now become central. The model of survivor driven testimonial inquiries, and associated responses such as apologies and reparations, has been understood within a transitional justice framework.<sup>24</sup>

The changing forms and approaches to inquiries into institutional abuse also call for attention to the context in which inquiries operate and warns against rigid definitions of what constitutes an inquiry. In contrast to taxonomies based on their form – statutory/non-statutory, inquisitorial/policy focused – this article develops an alternative approach to classification, one less concerned with the legislative basis and official form that inquiries take, and instead emphasises process, particularly for gathering evidence, as well as their

functions and outcomes. It takes as a case study Australian inquiries into child welfare from the mid nineteenth century to the mid 2010s.

### **Inquiries into child welfare – past and present**

Despite their recent prominence, inquiries into institutional child abuse are not a new phenomenon. As in other countries, inquiries into child welfare and allegations of maltreatment in Australia date back to the 1850s. This raises the question that, if a central function of inquiries is to expose facts and learn lessons from the past to improve the future, as the literature suggests, why were failures not identified, or if they were identified, why were they not acted upon?

Swain's recent survey of Australian inquiries reviewing institutions providing care for children uncovered 83 inquiries into child welfare issues, beginning with the New South Wales Select Committee on Destitute Children which sat from 1852 to 1854 and ending with the Victorian Select Committee on the handling of child abuse in religious and other non-government organisations.<sup>25</sup> Two more recent inquiries can be added to this survey, the Royal Commission into Institutional Responses to Child Sexual Abuse and the Royal Commission into the Protection and Detention of Youth in the Northern Territory, established in 2013 and 2016 respectively. The inquiries were held in all states and the Northern Territory, their distribution reflecting the shifting interest in child welfare over time. A variety of different investigatory mechanisms was employed, ranging from inquiries instituted by individual government departments or special interest groups, through to royal commissions.<sup>26</sup>

Although different patterns emerge in the individual jurisdictions, three broad types of inquiry are apparent: inquiries intended to set or refine policy directions; inquiries designed to protect the reputation of an institution or department in the face of external criticism;

and inquiries focused on hearing the testimonies of victims. The first of these categories combines the administrative and fact finding functions identified by Corby and colleagues and the second corresponds to his investigative classification, but the third is one not identified in their study.<sup>27</sup> While the frequency of inquiries in each category varies between the Australian states, overall there is a marked change over time, with policy based inquiries dominating in the nineteenth century, only to be gradually overtaken by reactive inquiries, which, by the end of the twentieth century, were replaced by what is now the dominant form, the victim-focused inquiry. It is from the third of these forms that the disclosures of abuse have emerged, raising the question of what was known, when, and why such knowledge was not acted upon.

#### *Policy setting inquiries*

From the mid-nineteenth century newly self-governing Australian colonies were very clearly focused on the future. Sharing, in their different ways, a determination to avoid the introduction of the Poor Laws which in England and Ireland guaranteed, albeit at a very minimal level, a right to relief for the destitute, they sought to find alternative ways of meeting visible need. The earliest of the Australian inquiries need to be understood in this context: attempts by colonial governments to provide for children whom they saw as being both at risk and a potential risk if left without supervision. Although there are some interesting examples of paths not followed, the suggestion that children be used to work an experimental cotton plantation, for example, the solution which emerges from most of these early inquiries is their confinement in child specific institutions.<sup>28</sup> Once this decision was in place the debate moved on to investigate the form which such institutions should take, and the role that Government should play in their funding and development.<sup>29</sup> Constituted predominantly as select committees of one or other house of the colonial parliaments, these inquiries took evidence from both officials and critics of the target institutions, but rarely undertook site visits.

Maximum economy was always a primary concern, but so too was the necessity to train the children so that they would not threaten the future of the colonies by following the bad example assumed to have been set by their parents.<sup>30</sup> The focus was not on the quality of care but on the quality of the outcome, sometimes combined with the promise that by making the children productive the institution could become self-supporting. A second group of inquiries, primarily during the 1870s, reflected a disappointment in the failure of this model of care. Constituted as royal commissions they took evidence from a wider range of witnesses, both within and outside the existing institutions, and, on occasions visiting 'experts', and were more likely to engage in site visits, including, in some instances, in adjoining colonies. These inquiries were unanimous in concluding that industrial schools did not make children industrious. Plagued by disease, disorder, and a sense that the children compared poorly with those growing up within families, their perceived failure led to a consensus that the large institutions be dismantled and replaced by a system of boarding-out. Children were to be placed with respectable working-class, and preferably rural, families in the hope that they would imbibe their industrious habits.

The late nineteenth century also saw the beginnings of a concern to segregate specific groups of children who were believed to be particularly at risk. In Western Australia an 1883 inquiry recommended the removal of Aboriginal children from adult gaols, a recommendation extended to the rest of the Aboriginal population in the 1905 Roth Report.<sup>31</sup> Roth argued that the Protector should be given extensive powers to institutionalise children from settlements across the state, a view repeated in the Mosley report 30 years later.<sup>32</sup> A 1913-16 inquiry recommended that South Australia adopt a similar policy with the NT later following suit.<sup>33</sup> An 1891 WA report recommended that intellectually disabled children be separated from adults in the colony's lunatic asylum, a recommendation reinforced in four further reports over the next 40 years.<sup>34</sup>

The first half of the twentieth century was a time of quiescence in relation to child welfare. Established state departments lumbered on, with little parliamentary interest except when scandals arose. From the late 1930s, however, concerns about what was perceived to be a rising tide of juvenile delinquency, saw the child welfare system again exposed to public gaze. The concern with delinquency is reflected in subsequent inquiries in WA and Tasmania, all of which combine an awareness that the current institutions were failing with a belief that a reformed institutional model could bring about behavioural change.

It would be wrong to suggest that these inquiries did not hear of instances of abuse. However, unlike more recent inquiries, none of them was established to investigate such charges and hence they did not follow up such evidence when it was produced. In Tasmania, the negative aspects of institutional care were frequently attributed to the legacy of convictism, and therefore blame could be ascribed to the Imperial Government.<sup>35</sup> The 'inhumane treatment' was not detailed, but used as evidence that the Orphan Schools still tended to function more as a gaol than as an institution where children could be 'fitly trained to become tidy, cleanly servants'.<sup>36</sup> At the 1870 Victorian Royal Commission on Charitable Institutions, Edwin Exon, superintendent of the Melbourne Orphanage, was the only witness asked about disciplinary practices. His response that the orphan would be tried first with kindness, and then with threats, and the punishment would increase in severity; and if nothing could be done, we should endeavour to get him transferred to some other institution, clearly satisfied the Commissioners who made no further inquiry on this subject of Exon or other witnesses.<sup>37</sup> Two years later the Royal Commissioners examining Victorian Industrial and Reformatory Schools as part of their inquiry into Penal and Prison Discipline heard from witnesses who were at least open to the possibility of abuse. The final report condemned the reformatory training ship as a site of 'immoral practices of the worst kind which can never be effectually suppressed'.<sup>38</sup> While there was no suggestion that the punishment regime in the schools was being transgressed, it was clear that children apprenticed from the schools could be at risk. However, again, the Commissioners were

satisfied with the explanation offered by George Duncan, the head of the department, that unless there was evidence that would 'justify' a police court case, he 'informed the employers that they were upon what we call our black-list, and they could get no more children from us'.<sup>39</sup>

On some occasions the 'harshness' in institutions was raised as part of an argument in favour of boarding-out. In 1919, following an earlier select committee which had praised the contributions of institutions, one WA MP alleged that the Department was in an alliance with institutions to keep their numbers up, in the process leaving the children to 'be turned into drudges ... slaving away at growing vegetables' and being thrashed when they refused to do so'.<sup>40</sup> However, it is also apparent from several of these inquiries that authorities were aware that boarding-out, too, could place children at risk, but the danger was consistently minimised. Mr Gray, a South Australian Destitute Board inspector, told the Way Commission that boarding-out did not guarantee the 'kindly love' which its advocates had promised, although he seemed confident that he had seen 'very little of direct cruelty or savagery, and... [did] not think there are some that have not been discovered'.<sup>41</sup> The Commissioners, however, seemed less concerned about this risk than they were about the possibility that child's religion might be changed.<sup>42</sup> The Victorian Royal Commission on Charitable Institutions, 1890-1, was similarly dismissive, assuming that 'adequate' inspection removed the risk of abuse.<sup>43</sup>

Reformatories provided a focus for several inquiries but most targeted the abuse which residents inflicted on each other. The 1873-4 Public Charities Commission, in NSW, was told that 'the vilest practices prevailed amongst the [reformatory] girls, and that every newcomer was compelled to submit to a process of initiation into these wickednesses, and allowed no peace until she consented. Yet the Superintendent would do nothing to stop it, and continued the system of locking the girls up, many together in the same dormitory, at six o'clock every evening'.<sup>44</sup> The 1883-5 Way Commission was equally concerned about the

risk to reformatory boys forced the share dormitories with 'boys of known immoral tendencies'. The solution the Commission advanced was increased visibility in boys' institutions and the introduction of a multi-level supervisory system. Where supervision failed to prevent such abuse, 'severe punishment should follow, so as to stamp out the evil as much as possible'.<sup>45</sup>

There were isolated instances, however, when evidence emerged of staff also engaging in abusive behaviour. The NSW Public Charities Commissioners took evidence from several reformatory residents who complained 'of having been beaten, kicked, dragged by the hair, caught by the throat, and of having their heads struck and rubbed against a wall'. They visited the room where the girls claimed to have been confined and found eight girls 'four of them in a half-naked condition, and all without shoes and stockings. Their wild glare and half-crazed appearance as the light of the open door fell upon them, struck us with horror'.<sup>46</sup> However, when the Superintendent resigned no further action was taken.

#### *Inquiries in response to public scandals*

Inquiries focused on policies and procedures rarely pursued allegations of abuse by staff, arguing that they fell outside their terms of reference. Inquiries which arose in response to public scandals could not use this excuse, yet here too the instinct was to shut down the scandal rather than use it as a means of bringing about change. It is remarkable in examining such inquiries how quickly their focus shifted from the victim to the accused. While it could be argued that this shift in focus reflected an unwillingness to discuss issues of sexual immorality in public, the result was that those in charge of such inquiries sought primarily to minimise the reputational damage, closing down rather than widening the investigation as quickly as possible.



The rare testimonies which were heard give insight into both routine institutional punishments as well as instances where this regimen was abused. Caning or flogging, which often required boys to bend over a fixed structure such as a gun or a gymnastic horse, were routine, although the circumstances in which such punishments could be administered were supposedly governed by regulation.<sup>47</sup> However where the regulations were overseen by the person delivering the punishment they provided no protection.<sup>48</sup> Physical punishment was augmented by various means of isolating the offender from his fellows, physically or psychologically through enforced silence.<sup>49</sup> Self-governance regimes introduced into many boys' institutions in the twentieth century gave legitimacy to sometimes even harsher punishment. At NSW's Riverina Farm Home in the 1930s, the two most common punishments were long distance running and the 'court martial', a procedure through which an accused boy was set to fight several of his fellows.<sup>50</sup> The running punishment, an ex-resident testified, had been devised by the boys themselves who preferred it to having to do extra schoolwork.<sup>51</sup> The court martial had been inherited from the harsh Gosford Home, although at Riverina the staff chose to supervise these fights for fear that someone might get hurt.<sup>52</sup> Tasmania's Ashley Boys Home inquiry disclosed a similar environment in which flogging and solitary confinement were routinely used, but always within the regulations: six strokes of the cane across the buttocks in the presence of another officer.<sup>53</sup>

When, in 1908, the Victorian government set up an inquiry into allegations that veteran child rescuer, Selina Sutherland, was unfit to continue to have charge of children, her accusers used instances of excess punishment to support their claim that she was drinking to excess. While some witnesses positioned such events as isolated incidents, others suggested that they were an everyday event with former residents afraid to report the abuse for fear of retaliation and former staff talking of having their reports ignored.<sup>54</sup> The outcome of the Sutherland inquiry is typical of the process by which such allegations in established institutions were resolved. A series of worthy citizens, former associates and care leavers testified to the quality of the work in which she had been engaged over the past

thirty years, assuring the inquiry that Sutherland only hit the children 'when they really deserved it'.<sup>55</sup> Cross-examining Edith Martin, a former assistant at the home, Sutherland's counsel asked whether she did not understand 'that many of the children at the home were gathered from the slums, and that their habits are dirty'. Martin rejected his insinuation but to little effect. The inquiry exonerated Miss Sutherland who left with her reputation only slightly dented.<sup>56</sup>

There was a sense in this and other inquiries that the authorities wanted to see any such scandals as aberrations to be quickly cast aside, rather than evidence of a problem that was systemic. Examined about the prevalence of immorality on the NSW training ship Vernon, shoemaking instructor James Pickering was reluctant to talk about what he had heard, agreeing with his questioner that 'no noise should be made about such cases'.<sup>57</sup> The final report of this inquiry echoed his view, concluding that 'there were a few cases of very disgraceful conduct but they were promptly punished and there is good reason to believe that the evil habit in question has been entirely eradicated'.<sup>58</sup> When the Tasmanian Government conducted a royal commission to investigate allegations of abuse at the Orphan Asylum in 1871, the hearings were held in camera so that the behaviours being described would not become public. The 1879 investigation of allegations of harsh discipline at Sydney's Randwick Asylum, found 'the personal chastisement ... [w]as indiscriminate and severe, but cannot be characterised as cruel ... There does not appear to be any ground whatever for the suspicion that the children ran away on account of insufficiency of food or of cruel treatment of any kind; or that they acted from any motive other than a wild boyish desire under vicious guidance to escape from restraint'.<sup>59</sup> One of the witnesses who had given evidence to the contrary was quickly discredited when he had to admit that he had kissed one of the female residents, and had been before the board on a charge of indecent assault.<sup>60</sup> The outcome seems to support the suggestion of a Newcastle newspaper that the inquiry was typical of a process in which 'a fresh batch of victims make their escape, and a

fresh outcry is raised, at which every obstacle is put in the way of getting at the truth, and the result is kept back till the cause for it has faded from the public mind'.<sup>61</sup>

In the light of subsequent inquiries this suggestion seems almost prophetic. The 1934 NSW inquiry into the Riverina Farm home which saw the Superintendent demoted, and formal regulation of allowable punishments was the exception in an otherwise bleak scenario.<sup>62</sup> A 1936 inquiry into allegations of 'excessively severe discipline' and 'excessive flogging for inadequate offences' at the Victorian Anglican boys' home, St Martin's and St John's, was closed down after the superintendent, the Rev Eric Thornton, became ill. Assured by the Archbishop that Thornton had left for England and would not be permitted to return to work with children, all the interested parties agreed that nothing would be achieved by continuing the inquiry.<sup>63</sup> Promising that in future all punishments will be recorded and the regimen would be revised, particularly in relation to the use of silence, the Archbishop added 'there seems to be a consensus of opinion that corporal punishment is necessary occasionally, especially in consideration of the lack of early parental control in the case of many of these boys'.<sup>64</sup> An inquiry, fifteen years later, into criticism by a former staff member of caning and solitary confinement at Tasmania's Ashley Boys' Home, did not support claims that such punishments were excessive, criticising instead the staff member for stepping outside his area of responsibility.<sup>65</sup>

What is striking throughout this history is again the rapidity with which sympathy moved from the victims to the perpetrator. The commander of the Vernon, purser Edward Nestor Waller testified, was 'sometimes very kind ... and at others just the reverse ... 'very sharp – passionate'.<sup>66</sup> At St Martin's and St John's, Thornton's counsel expressed his fears that the inquiry was likely to turn into a 'vicious man hunt', a view with which the inquiry appeared to concur in deciding that further investigation was unnecessary given that the clergyman had left the state.<sup>67</sup>

Similar observations can be made in relation to the two investigations which explicitly addressed sexual abuse. At the special inquiry ordered in response to the chaotic conditions at Victoria's industrial schools in 1865-6, it was alleged that the Superintendent had engaged in improper relations with adolescent girls. The reportage of the inquiry was heavily coded, but it is clear that while the perpetrator was condemned as a 'loathsome miscreant' the implication was that he was sorely tempted, the schools being described as 'nurseries of prostitution'.<sup>68</sup> The second inquiry, which took place in NSW in 1897-8, related to the House for the Blind at Strathfield, where the Superintendent, Harry Prescott, was charged with having had improper relations with several of the female residents. In the interests of public morality the government ordered the report not to be printed, but an analysis of the minutes of evidence shows that the emphasis of the investigation was as much on the morality of the complainants as on the behaviour of Prescott himself.<sup>69</sup>

Although the scandals which gave rise to all these inquiries were driven by a comparison between institutional and idealised childhood, the inquiries used a different measure: the appropriate care for 'children like these'. While outside observers might look for evidence of 'books ... games ... [or] anyone who showed a happy, merry childish irresponsibility', those charged with running the institutions were pre-occupied by the need to maintain control. Othered, constituted as a threat rather than a victim, or, in Harry Ferguson's words as 'moral dirt', the children who found themselves in Australia's orphanages and children's homes were to be contained rather than cared for.<sup>70</sup> It was for this reason that the institutions conducted by the Salvation Army and the Catholic Church which so pre-occupy the current Royal Commission into Institutional Responses to Child Sexual Abuse in Australia, were routinely admired in earlier inquiries. There was considerable admiration for order and economy but no place for arguments about the need to enrich the quality of care.

Positioned in this way, children were ill-equipped to make a case against their abusers. As with most common law countries, children in Australia were considered incompetent to

testify before they reached the age of 14.<sup>71</sup> Therefore the few who did testify before inquiries were in late adolescence, or, in some cases, adults reflecting on past experiences. However, even when they were of an age to be competent to testify, institutionalised children faced additional barriers based on assumptions about their morality. The behaviour of the Victorian Industrial School superintendent accused of sexual abuse was largely excused on the basis of the 'character' of the witnesses who had 'sprung from the very dregs of society' and whose origins made 'the task of looking after them anything but easy or hopeful'.<sup>72</sup> The evidence of the women who had accused the superintendent of the House for the Blind of sexually molesting them was discredited by the claim that they had lied in the past and the assurance that 'blind girls [tend] to exaggerate facts of the nature involved'.<sup>73</sup> Evidence that girls were routinely overworked in many institutions were met with the claim that the regime was designed 'for the girls own good. Idleness has a most deteriorating influence in all classes, especially so amongst these girls'.<sup>74</sup> Allegations of harsh punishments in boys' institutions were justified as essential: 'these boys are not easily handled ... you will never do any good with them if you do not punish them'.<sup>75</sup> Witnesses were regularly reminded that such boys were in care 'because they were uncontrollable'.<sup>76</sup> 'Firm and just discipline must essentially play a part in the efforts to turn such boys into useful citizens'.<sup>77</sup>

### *Testimony driven inquiries*

Legal scholar, Kathy Daly, has observed similar practices of individualising accusations of sexual abuse, discrediting witnesses, and minimising reporting in the interests of public morality in the inquiries which she has studied.<sup>78</sup> However this tactic was successful only while inquiries looked to experts rather than victims for the answers to the problems they were addressing. The inquiries since the late 1980s have broken open such silences by actively seeking out survivor testimony. While there were instances in the past of residents in children's institutions being invited to give evidence before inquiries, their testimony was

always peripheral to the main focus of the investigations and all too often corrupted by their status. The emergence of survivor testimony as central to abuse inquiries is linked to the apology movement which has become increasingly evident across the Western world in the aftermath of World War II. Initially a function of recognising and remembering the Holocaust, apologies have since spread to the impact of war, racial discrimination, and more recently other social wrongs. The phenomenon of apology, John Torpey has argued, arises out of a 'declining trust in alternative visions of society'. Rather than organise to change, he suggests, we now 'organise to mourn' with the result that history and memory have now become 'central to the political project'.<sup>79</sup> Through apology, Govier and Verwoerd have written, the wrongdoing is recognised, victims are repositioned as moral equals, and their right to harbour feelings of anger and resentment is acknowledged.<sup>80</sup> Apology, Melissa Nobles argues, is a political act, produced by 'organized groups and state actors' who, by focusing our attention on the past want to bring about change in the present and the future.<sup>81</sup> Through this process, people who in their childhood were the objects of state and charitable intervention, are now asserting their rights to recognition as equal citizens whom the state has wronged.

The new model of testimonial-based inquiry came to Australia with the Royal Commission into Aboriginal Deaths in Custody. An extensive series of inquiries followed, as different survivor groups claimed their right to speak. The long lists of institutions named in these reports is evidence of the blindness to abuse which marked earlier investigations. Institutions praised in the past now stand condemned for their failure to protect the children in their 'care'. By focusing on survivor testimony, recent inquiries have found that abuse was endemic in institutional settings. That conclusion is supported by the correlation between the evidence led at such inquiries and the traces apparent from the earlier investigations that did not share this focus.<sup>82</sup>

## **Conclusion**

Historical institutional abuse inquiries provide a critical means by which the past abuse of children is now documented and acknowledged. In contrast to earlier official inquiries into child welfare, which typically silenced the victim and supported institutions, testimonial driven inquiries privilege the voice of survivors and challenge institutional accounts. This has fostered new perspectives on the history of children's 'care' and recognition – and in some cases redress – for adults who were abused as children in institutional settings. The existing literature that aims to conceptualise and categorise public inquiries does not capture the significance of this development.

This article has examined the shifting terrain of inquiries to lay the foundation for a new approach to conceptualise *what inquiries are* and *what they do* in the current era. Rather than focusing on classification based on the powers an inquiry might hold, or how it is constituted, it has argued that attention to function and effects offers a more textured basis for classification. Employing an historically contextualised approach, it used a survey of Australian inquiries to identify three broad categories of inquiries into child welfare: those intended to set or refine policy directions; inquiries designed to protect the reputation of an institution or department in the face of external criticism; and inquiries focused on hearing the testimonies of victims. The paper argued that testimonial driven inquiries constitute a new form of inquiry, which necessitates a new means of classification. Such categorisation is important, for regardless of inquiry 'type' (legalistic, research-based, statutory/non-statutory), the function, focus, and findings of inquiries changed when the evidence of ordinary people was taken seriously. Importantly, this points to the shifting status and power of the 'victim', which taxonomies of inquiries based on legal status or other markers overlook. In order to provide a comparative basis for a context sensitive categorisation of inquiries, it is essential to consider the changing form and function of inquiries over time, who is licensed to speak and whose evidence is accepted and challenged, and how this has shaped inquiry outcomes throughout history.

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## Notes

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<sup>3</sup> The article builds on a survey of inquiries conducted by Shurlee Swain, *History of Australian Inquiries Reviewing Institutions Providing Care for Children* (Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse, 2014), accessed 22 February 2017, <https://www.childabuseroyalcommission.gov.au/getattachment/8aafa21e-36e0-41c2-8760-b17662fb774f/History-of-Australian-inquiries-reviewing-institut>; and research undertaken by the authors for the project, Wright et al., *The Age of Inquiry*.

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<sup>7</sup> Prasser and Tracey, *Royal Commissions & Public Inquiries*, 37.

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<sup>10</sup> Lars Trägårdh, "Democratic Governance and the Creation of Social Capital in Sweden: The Discrete Charm of Governmental Commissions". In *State and Civil Society in Northern Europe: The Swedish Model Reconsidered*, edited by Lars Trägårdh (New York: Berghahn Books, 2007), 263-264; Sara Edenheim, "Politics Out of Time: Historical Expertise and Temporal Claims in Swedish Governmental Reports". In *In Experts We Trust: Knowledge, Politics and Bureaucracy in Nordic Welfare States*, edited by Åsa Lundqvist and Klaus Petersen (Odense: University Press of Southern Denmark, 2010), 35-36.

<sup>11</sup> Trägårdh, "Democratic Governance and the Creation of Social Capital in Sweden", 264.

<sup>12</sup> Utredningen om Vanvård i den Sociala Barnvården, *Vanvård i Social Barnvård under 1900-talet* (Stockholm: Fritzes, 2009), 49.

<sup>13</sup> Parliament of Australia, "Information on Senate Committees and Getting Involved",

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<sup>15</sup> Jason Beer, ed., *Public Inquiries* (Oxford: Oxford University Press 2011); Adam Burgess, *Public Inquiries and the Management of Public Risk* (Kent: Risk and Regulation Advisory Council, 2009).

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<sup>17</sup> Friberg, "Experterna och Språket", p. 50; Viviann Gunnarsson and Marja Lemne, *Kommittéerna och Bofinken: Kan en Kommitté se ut Hur Som Helst?* (Stockholm: Fritzes, 1998), 116-118.

<sup>18</sup> Prasser, *Royal Commissions*, 22.

<sup>19</sup> Wright, "Remaking Collective Knowledge"

<sup>20</sup> Brian Corby, Alan Doig and Vicki Roberts, *Public Inquiries into Residential Abuse of Children* (London: Jessica Kingsley, 2001).

<sup>21</sup> Corby et al., *Royal Commissions and Public Inquiries*, 55.

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<sup>23</sup> Prasser, *Royal Commissions and Public Inquiries*, 15.

<sup>24</sup> Sköld, "Historical Abuse—A Contemporary Issue; Swain, *History of Australian Inquiries*; Anne-Marie McAlinden, "An Inconvenient Truth: Barriers to Truth Recovery in the Aftermath of Institutional Child Abuse in Ireland, *Legal Studies* 33, no. 2, 189-214.

<sup>25</sup> A complete list of the Australian inquiries covered in this article is available as an appendix to Swain, *History of Australian Inquiries*.

<sup>26</sup> The paper prepared for the Royal Commission also included coronial reports but because they were, by definition, focused on a specific death they have not been included in this study.

<sup>27</sup> Corby et al., *Public Inquiries into Residential Abuse of Children*, 52.

<sup>28</sup> *Empire*, "The Empire", 11 August 1852, 2, accessed 10 January, 2014, <http://nla.gov.au/nla.news-article60130781>; "Destitute Children and Cotton Growing", *The Sydney Morning Herald*, 10 June 1852, Supplement: Supplement to the Sydney Morning Herald, 2, accessed 10 January, 2014, <http://nla.gov.au/nla.news-article12937468>.

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<sup>30</sup> The centrality of economy to colonial child welfare systems has been noted by several historians. See for example Donella Jaggs, *Neglected and Criminal: Foundations of Child Welfare Legislation in Victoria*, (Melbourne: Phillip Institute of Technology, 1986); Nell Musgrove, *The Scars Remain: A Long History of Forgotten Australians and Children's Institutions*, (Melbourne: Australian Scholarly Publishing, 2013).

<sup>31</sup> *Report of a Commission Appointed by His Excellency the Governor to Inquire into the Treatment of Aboriginal Native Prisoners of the Crown in this Colony: And also in Certain Other Matters Relative to Aboriginal Natives*, 1884; Royal Commission to Investigate, Report and Advise upon Matters in Relation to the Condition and Treatment of Aborigines 1935.

<sup>32</sup> Royal Commission to Investigate, Report and Advise upon Matters in Relation to the Condition and Treatment of Aborigines 1935.

<sup>33</sup> Royal Commission on Aborigines, 1913-15.

<sup>34</sup> Select Committee of the Legislative Assembly to consider and report as to what is necessary to place the Asylum for the Insane on a satisfactory basis as to Accommodation and Maintenance, 1891.

<sup>35</sup> *The Hobart Town Daily Mercury*, "The Mercury", 4 November 1858, 2, accessed 10 January, 2014, <http://nla.gov.au/nla.news-article3251379>.

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<sup>37</sup> "Report of the Royal Commission on Charitable Institutions", in *Victorian Parliamentary Papers* (Melbourne: Government Printer, 1871), 32.

<sup>38</sup> *The Argus*, "Reformatory Schools", 19 August 1872, 6, accessed 20 January, 2014, <http://nla.gov.au/nla.news-article5837184>.

<sup>39</sup> "Report (No 3) of the Royal Commission on Penal and Prison Discipline: Industrial and Reformatory Schools", in *Victorian Parliamentary Papers* (Melbourne: Government Printer, 1872), 8.

<sup>40</sup> Quoted in *The Daily News*, "The State Children", 4 September 1919, 4, Third Edition, accessed 24 January, 2014, <http://nla.gov.au/nla.news-article81342086>.

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<sup>42</sup> *South Australian Weekly Chronicle*, "[No heading]", 19 July 1884, 9, accessed 21 January, 2014, <http://nla.gov.au/nla.news-page8434618>.

<sup>43</sup> *The Argus*, "Royal Commission on Charities", 23 December 1891, 6, accessed 23 January, 2014, <http://nla.gov.au/nla.news-article8636442>.

<sup>44</sup> *Freeman's Journal*, "The Public Charities Commission", 6 June 1874, 8, accessed 20 January, 2014, <http://nla.gov.au/nla.news-article128809630>.

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