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From shame to guilt: negotiating moral and legal responsibility within apologies for historical institutional abuse

ANNE-MARIE MCALINDEN

School of Law, Queen's University Belfast,
Main Site Tower, University Square,
Belfast, BT7 1NN, Northern Ireland

Correspondence

Anne-Marie McAlinden, School of Law,
Queen's University Belfast, Main Site
Tower, University Square, Belfast,
BT7 1NN, Northern Ireland
Email: a.mcalinden@qub.ac.uk

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Abstract

This article explores the role of apology in addressing moral and legal responsibility for historical institutional abuse (HIA). Drawing on extensive fieldwork in Northern Ireland and the Republic of Ireland, it analyses juridical techniques within official apologies, principally by the Catholic Church, to circumvent legal responsibility for HIA: the use of language, the avoidance of tangible redress, and the preference for offering private apologies. Moving beyond the literature, it highlights a more nuanced range of legal and ideological barriers to sincere apologies: the role of canon law, the role of lawyers, and concerns with multiple audiences. The article argues that traversing the complex moral and legal dimensions of apology entails moving from the general expression of remorse and shaming of the self to the specific acceptance of harm to others and responsibility for repair. It concludes by reflecting on the core elements of 'remedial responsibility', new classifications of apologies, and their broader therapeutic value.

1 | INTRODUCTION

An apology can ... be lovely, beautiful words of moral culpability and it can also be an indication and an acceptance of legal liability ... But down the road, if it is

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not an acceptance of legal liability, then its value will be undone for many people ... That's why I just think the responsibility on the State to ... apologize, is to apologize legally ... It has done legal wrongs.¹

Scholars have described the contemporary cultural proliferation of apologies as 'the age of apology',² characterized by 'apology mania'³ and 'contrition chic'.⁴ This mainstreaming or 'commodification'⁵ of apologies is illustrated by their habitual use by public or political figures in times of scandal or crisis as part of 'performative redress'⁶ or 'gestural politics'.⁷ Within the legal arena, however, the role of apology is more complex and contested. A critical part of this contestation lies in the potential tensions between the moral and legal dimensions of apology. That is, while there is a clear moral dimension to apologies – chiefly in terms of restoring the emotional imbalance between victim/survivor and perpetrator via the taking of responsibility for wrongdoing⁸ – the nature of Western adversarial legal systems often conflicts with this dimension.

This article examines the critical tensions between the moral and legal elements of apology within the specific context of apologies for historical institutional abuse (HIA) by the Catholic Church and the State in Northern Ireland (NI) and the Republic of Ireland (RoI), and how they might be addressed. It explores in particular the how and the why of the moral-legal dyad of apology – the specific juridical techniques used within apologies and apology processes to avoid the acceptance of full legal responsibility for HIA, and the legal and ideological barriers that may impede genuine apologies – which will have resonance elsewhere. There are notable contextual differences between Church and State apologies, not least in relation to the state's legal responsibilities for redress and the effort to make collective reparations on behalf of wider society. However, while focusing predominantly on Church apologies, the analysis also highlights similar criticisms of State apologies in terms of the avoidance of formal redress for HIA.

The core themes stemming from the legal and psychological literature on apologies – and specifically on the potential tensions between moral and legal culpability, and shame and guilt – are discussed in the next section. At this juncture, however, it is useful to provide some brief definitional and historical context. The broad term 'HIA' encompasses three principal categories: (1) historical abuses of women and children in residential care settings,⁹ including care homes, industrial schools, mother and baby institutions, and 'Magdalen laundries';¹⁰ (2) historical abuses committed by members of religious organizations (also known as 'clerical sexual abuse');¹¹ and

¹ Interview 20, lawyer, 17 May 2019.

² M. Gibney et al. (eds), *The Age of Apology: Facing Up to the Past* (2008).

³ L. Taft, 'Apology Subverted: The Commodification of Apology' (2000) 109 *Yale Law J.* 1135.

⁴ W. Shapiro, 'Mama Mia, That's a Mea Culpa' *Time*, 30 June 1997, at <<https://content.time.com/time/subscriber/article/0,33009,986620,00.html>>.

⁵ Taft, *op. cit.*, n. 3.

⁶ J. Borneman, 'Public Apologies as Performative Redress' (2005) 25 *SAIS Rev. of International Affairs* 53.

⁷ M. Cunningham, 'Saying Sorry: The Politics of Apology' (1999) 70 *The Political Q.* 285, at 288.

⁸ Y. Wang, 'Lingering Guilt and Shame: Emotional Burdens upon Those Who Intended but Failed to Apologize' (2020) 160 *J. of Social Psychology* 675.

⁹ K. Daly, *Redressing Institutional Abuse of Children* (2014).

¹⁰ 'Magdalen laundries' were institutions run predominantly by the Catholic Church on behalf of the State for 'fallen women' and operated across the island of Ireland from the eighteenth century to the late twentieth century.

¹¹ M. Keenan, *Child Sexual Abuse and the Catholic Church: Gender, Power, and Organizational Culture* (2011).

(3) the forced removal of children from their families, following which many suffered abuse and neglect.¹² The focus in NI and the RoI has been on all three categories.

The extensive interdisciplinary literature on apology spans a range of fields including law,¹³ political science,¹⁴ history,¹⁵ management and communication studies,¹⁶ sociology,¹⁷ and social psychology.¹⁸ Despite slight variations and refinements of what constitutes an effective apology within and between these literatures, many definitions affirm the fundamental necessity of acceptance of responsibility for wrongdoing as well as the importance of repair. For example, Slocum and colleagues propose three central components of a 'true' apology: (1) 'affirmation', requiring offenders to accept and explain their wrongful behaviour; (2) 'affect', conveying remorse and an offender's emotional response to the wrong; and (3) 'action', including behavioural attempts to repair the harm and avoid repetition.¹⁹ Drawing on Austin's work, apologies may also be conceived of as a 'speech act', whereby verbal utterances comprise a number of elements related to locution (the rhetoric), illocution (the intention of the speaker/writer), and perlocution (the effects on recipients).²⁰ Collectively, these interpretations underline the importance of not only the rhetorical and performative aspects of apology, but also the backward- and forward-looking aspects, which must simultaneously acknowledge responsibility for past wrongs as well as offer a tangible commitment to future corrective action (typically via reparations or policy reform).²¹

The term 'responsibility' can have a number of meanings.²² Within the context of HIA, as the opening quotation conveys, the obligation on the State in particular to apologize, legally as well as morally, stems from the fact that 'it has done legal wrongs' and from the historical and cultural architecture of State-administered institutional regimes. As I have explored elsewhere, there is a deeply enmeshed relationship between the Church and the State in Ireland, and in the RoI in particular, which underpins not only the 'architecture of containment'²³ but also contemporary legal frameworks around redress.²⁴ In brief, institutions were run by religious organizations on

¹² D. M. Cuthbert and M. Quartly, 'Forced Child Removal and the Politics of National Apologies in Australia' (2013) 37 *Am. Indian Q.* 178.

¹³ P. Vines, 'The Power of Apology: Mercy, Forgiveness or Corrective Justice in the Civil Liability Arena' (2007) 1 *Public Space* 1; N. Smith, *Justice through Apologies: Remorse, Reform, and Punishment* (2014).

¹⁴ Cunningham, op. cit., n. 7; M. Nobles, *The Politics of Official Apologies* (2008).

¹⁵ R. Weyeneth, 'The Power of Apology and the Process of Historical Reconciliation' (2001) 23 *The Public Historian* 9; M. R. Marrus, 'Official Apologies and the Quest for Historical Justice' (2007) 6 *J. of Human Rights* 75.

¹⁶ K. M. Hearit, *Management by Apology: Corporate Responses to Allegations of Wrongdoing* (2006); W. L. Benoit, *Accounts, Excuses, and Apologies: Image Repair Theory and Research* (2015, 2nd edn).

¹⁷ E. Goffman, *Relations in Public: Microstudies of the Public Order* (1971); N. Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (1991).

¹⁸ M. J. A. Wohl et al., 'Why Group Apologies Succeed and Fail: Intergroup Forgiveness and the Role of Primary and Secondary Emotions' (2012) 102 *J. of Personality and Social Psychology* 306.

¹⁹ D. Slocum et al., 'An Emerging Theory of Apology' (2011) 63 *Aus. J. of Psychology* 83.

²⁰ J. L. Austin, *How to Do Things with Words* (1962, 2nd edn).

²¹ S. Alter, *Apologizing for Serious Wrongdoing: Social, Psychological and Legal Considerations* (1999), at <<https://dalspace.library.dal.ca/bitstream/handle/10222/10273/Alter%20Research%20Apology%20EN.pdf>>.

²² For example, Miller distinguishes between 'outcome responsibility' derived from our actions and decisions and 'remedial responsibility' to repair injustices or help those in need: D. Miller, *National Responsibility and Global Justice* (2007).

²³ J. M. Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (2007).

²⁴ See for example A. M. McAlinden, 'An Inconvenient Truth: Barriers to Truth Recovery in the Aftermath of Institutional Child Abuse in Ireland' (2013) 33 *Legal Studies* 189.

behalf of the State. Individuals were committed to these institutions, on both legal and extra-legal grounds, via the political authority of the State.²⁵ The key findings of successive commissions of investigation demonstrate that abuses, as well as the failures of Church and State authorities to adequately respond to the problem, were systemic.²⁶ Moreover, in many senses, the Church's historical reluctance to engage fully with victims/survivors has been actively enabled by the State, such as through State-sanctioned indemnity against financial contributions to redress.²⁷ Therefore, as this article contends, an effective apology for HIA by the Church or the State must include a recognition of both 'moral' or agentic responsibility,²⁸ including 'causal' and 'avoidance' responsibility (which involves accepting blame for causing the abuses of the past or for failing to prevent them)²⁹ and 'legal' or 'remedial'³⁰ responsibility (which involves acknowledging the violation of victims'/survivors' rights and therefore responsibility for repair).³¹

There is a small empirical literature on apology, which has focused predominantly on governmental apologies and their reception by victimized or non-victimized communities.³² However, this literature is very state focused and there are limited empirical studies on HIA, including with victims/survivors.³³ This article addresses these gaps in the literature. It draws on extensive empirical data related to HIA as one of three case studies within the wider *Apologies, Abuses and Dealing with the Past* project, in the form of a specially compiled archive of public apologies for HIA; focus groups with members of the public and with victims/survivors; and semi-structured interviews with key stakeholders in NI and the RoI.

Based on insights from the theoretical literature and the primary data, the article explores two key issues: (1) the use of specific juridical techniques within the construction of apologies and the choreography of apology processes, which may indicate the acceptance of moral but not legal culpability for HIA; and (2) the legal and ideological barriers that have prevented the Church in particular from taking responsibility for HIA. The overall argument is that it is the acceptance of both moral and legal culpability for HIA that augments the transformative value of apologies and moves them beyond a purely symbolic or performative function. The article contends that negotiating the complex moral and legal dimensions of apology for HIA entails moving from a

²⁵ The *Report of the Inter-Departmental Committee to Establish Facts of State Involvement with the Magdalen Laundries* highlighted the multiple routes to institutionalization, including referral by the State, families, or the local priest: Department of Justice, *Report of the Inter-Departmental Committee to Establish Facts of State Involvement with the Magdalen Laundries* (Chair: Senator Martin McAleese) (2013), at <<https://www.justice.ie/en/JELR/Pages/MagdalenRpt2013>>.

²⁶ See for example CICA, *Report of the Commission to Inquire into Child Abuse* (2009) vol. IV, paras 6.09–6.18, at <<https://www.gov.ie/en/publication/3c76d0-the-report-of-the-commission-to-inquire-into-child-abuse-the-ryan-re/>>.

²⁷ See for example the controversial Congregational Indemnity Agreement concluded in 2002.

²⁸ M. A. L. Oshana, 'Ascriptions of Responsibility' (1997) 34 *Am. Philosophical Q.* 71.

²⁹ B. Weiner, *Judgments of Responsibility: A Foundation for a Theory of Social Conduct* (1995).

³⁰ J. Thompson, 'Is Political Apology a Sorry Affair?' (2012) 21 *Social & Legal Studies* 215, at 223; Miller, op. cit., n. 22.

³¹ This notion of remedial responsibility reflects the Latin maxim 'Ubi jus, ibi remedium' ('Where there is a right, there is a remedy'). That is, the duty of the State to repair stems from a breach of its primary obligations to its citizens, including the protection of human rights. See generally M. O'Rourke, 'Ireland's Magdalene Laundries and the State's Duty to Protect' (2011) 10 *Hibernian Law J.* 200; J. Gallen and K. Gleeson, 'Unpaid Wages: The Experiences of Irish Magdalene Laundries and Indigenous Australians' (2018) 14 *International J. of Law in Context* 43.

³² C. W. Blatz et al., 'Government Apologies for Historical Injustices' (2009) 30 *Political Psychology* 219; R. R. Steele and C. W. Blatz, 'Faith in the Just Behavior of the Government: Intergroup Apologies and Apology Elaboration' (2014) 2 *J. of Social and Political Psychology* 268.

³³ For an isolated example, see B. Hamber and P. Lundy, 'Lessons from Transitional Justice? Toward a New Framing of a Victim-Centered Approach in the Case of Historical Institutional Abuse' (2020) 15 *Victims & Offenders* 744.

focus on self and an oblique awareness of the inadequacy of one's actions (or 'shame') towards a focus on others and the explicit acceptance of blame for past wrongs, including the infringement of human rights and, with this, the responsibility for remedial action (or 'guilt'). In the course of this analysis, three recurring themes emerge: agency, action, and audience.

The structure of the article is as follows. Part 2 begins by providing a critical overview of the core themes from the legal literature on apologies in law and the psychological literature on shame and guilt. Part 3 briefly outlines the research methodology utilized in the study. Reflecting on key themes from the theoretical literature and drawing on the primary data, Parts 4 and 5 examine the use of juridical techniques within official apologies to repudiate legal culpability for HIA and the range of legal and ideological barriers to accepting legal responsibility. Finally, reflecting on these deficits, the concluding section draws out a number of new classifications of apology for HIA and considers the indicative features of apologies within the context of remedial responsibility,³⁴ as well as their broader therapeutic value within legal discourses.

2 | APOLOGIES, LAW, MORAL AND LEGAL CULPABILITY, AND SHAME/GUILT

Within legal scholarship, an apology is thought to comprise four basic elements, which are also illustrative of the dual past and future focus. The perpetrator (1) specifically explains what they did, (2) accepts blame, (3) commits to not re-offending, and (4) provides adequate redress to the victim/survivor.³⁵ As discussed below, the first and second elements are potentially incompatible with a legal context, as effusive apologies bring with them not only a range of psychological benefits for victims/survivors but also possible legal consequences for perpetrators. Moreover, by focusing on the disputed nature of guilt, legal settings can by their very nature displace the moral dimensions and therefore undermine the therapeutic and transformative potential of apologies for victims/survivors.

In a criminal context, apologies as an admission of guilt are generally incompatible with mounting one's legal defence.³⁶ In civil settings, apologies have formed part of court-mandated outcomes, or worked on a voluntary basis to facilitate early settlement or mitigate legal action completely.³⁷ However, for some victims/survivors, including those who have suffered HIA, emotional or symbolic reparation via acknowledgement of wrongdoing is far more important than material reparation.³⁸ Victims/survivors have also initiated legal proceedings in order to receive such an acknowledgement.³⁹ Apologies within legal settings, therefore, can provide victims/survivors with accountability and redress when they are not offered voluntarily.⁴⁰ On one

³⁴ Miller, *op. cit.*, n. 22; Thompson, *op. cit.*, n. 30.

³⁵ E. A. O'Hara and D. Yarn, 'On Apology and Consilience' (2002) 77 *Washington Law Rev.* 1121; N. Smith, 'Political Apologies and Categorical Apologies' in *Uses and Abuses of Political Apologies*, eds M. Mihai and M. Thaler (2014) 32.

³⁶ Alter, *op. cit.*, n. 21.

³⁷ J. K. Robbennolt, 'Apologies and Legal Settlement: An Empirical Examination' (2003) 102 *Michigan Law Rev.* 460; Smith, *op. cit.*, n. 13.

³⁸ Shuman highlights the negotiations between victims/survivors and the Dallas Catholic Diocese, where victims/survivors settled for vastly reduced damages on the condition that the Church apologized for wrongdoing: D. W. Shuman, 'The Role of Apology in Tort Law' (2000) 83 *Judicature* 180.

³⁹ B. T. White, 'Say You're Sorry: Court-Ordered Apologies as a Civil Rights Remedy' (2006) 91 *Cornell Law Rev.* 1261.

⁴⁰ Shuman, *op. cit.*, n. 38; P. H. Rehm and D. R. Beatty, 'Legal Consequences of Apologizing' (1996) 1996 *J. of Dispute Resolution*, at <<https://scholarship.law.missouri.edu/jdr/vol1996/iss1/7>>.

level, apologies are more likely to occur within restorative settings, including mediation,⁴¹ which are said to offer a ‘safe space’ for apologies without fear of legal consequences.⁴² However, as Levi notes, even within mediation settings, apologies may become ‘tactical’, ‘explanatory’, and ‘formalistic’ in order to mitigate liability.⁴³

Indeed, Western legal culture generally discourages ‘saying sorry’ as an acceptance of blame or responsibility.⁴⁴ For example, within the sphere of medical malpractice, while apologetic statements may be given as part of full disclosure of medical errors,⁴⁵ the ‘specialist linguistic weight’ of apology as an expression of remorse may help to prove liability in a case of medical negligence.⁴⁶ It is for this reason that several jurisdictions, including Canada, Hong Kong, Australia, New Zealand, and several US states, have specifically enacted ‘apology laws’ providing for the inadmissibility of statements of regret as evidence of the admission of responsibility.⁴⁷ Such measures explicitly extricate apology from the taking of formal responsibility for wrongdoing.

In relation to the Catholic Church and HIA, scholars have highlighted concerns about ‘crisis management’ or ‘reputation management’ and the fear of widespread legal and financial liability.⁴⁸ This often leads in turn to ‘equivocation’⁴⁹ and ‘defensiveness’⁵⁰ in organizational communication, or what has been termed ‘apologia’,⁵¹ where apologies are carefully crafted to avoid any admission of wrongdoing. Such ‘partial’,⁵² ‘pseudo’,⁵³ ‘quasi’,⁵⁴ or ‘incomplete’⁵⁵ apologies usually express sympathy without the admission of guilt. As discussed further, there are many examples of platitudinal apologies by the Catholic Church, which condemn abuse and express sympathy or regret but specifically avoid any admission of responsibility or

⁴¹ D. L. Levi, ‘The Role of Apology in Mediation’ (1997) 72 *New York University Law Rev.* 1165.

⁴² Id.; J. K. Robbennolt, ‘Attorneys, Apologies, and Settlement Negotiation’ (2008) 13 *Harvard Negotiation Law Rev.* 349.

⁴³ Levi, id., p. 1168.

⁴⁴ For example, Wagatsuma and Rosett contrast the US and Japanese legal systems and their respective focus on individual responsibility and socially inappropriate acts: H. Wagatsuma and A. Rosett, ‘The Implications of Apology: Law and Culture in Japan and the United States’ (1986) 20 *Law & Society Rev.* 461.

⁴⁵ A. Lazare, ‘Apology in Medical Practice: An Emerging Clinical Skill’ (2006) 11 *J. of the Am. Medical Association* 1401.

⁴⁶ S. E. Raper, ‘No Role for Apology: Remedial Work and the Problem of Medical Injury’ (2011) 11 *Yale J. of Health Policy, Law, and Ethics* 267, at 269.

⁴⁷ J. C. Kleefeld, ‘Promoting and Protecting Apologetic Discourses through Law: A Global Survey and Critique of Apology Legislation and Case Law’ (2017) 7 *Oñati Socio-Legal Series* 455.

⁴⁸ T. Barth, ‘Crisis Management in the Catholic Church: Lessons for Public Administrators’ (2010) 70 *Public Administration Rev.* 780; Hearit, op. cit., n. 16.

⁴⁹ J. Bavelas, ‘An Analysis of Formal Apologies by Canadian Churches to First Nations’ (2004) Occasional Paper No. 1, Centre for Studies in Religion and Society, 8, at <<http://web.uvic.ca/psyc/bavelas/2004ChurchApol.pdf>>.

⁵⁰ L. Tyler, ‘Liability Means Never Being Able to Say You’re Sorry: Corporate Guilt, Legal Constraints, and Defensiveness in Corporate Communication’ (1997) 1 *Management Communication Q.* 51.

⁵¹ B. L. Ware and W. A. Linkugel, ‘They Spoke in Defense of Themselves: On the Generic Criticism of Apologia’ (1973) 59 *Q. J. of Speech* 279.

⁵² Nobles, op. cit., n. 14, p. 32.

⁵³ A. Lazare, *On Apology* (2004) 9.

⁵⁴ J. Matt, ‘Wrestling with the Past: Apologies, Quasi-Apologies, and Non-Apologies in Canada’ in Gibney et al. (eds), op. cit., n. 2, p. 137.

⁵⁵ M. Swart, ‘Sorry Seems to Be the Hardest Word: Apology as a Form of Symbolic Reparation’ (2008) 24 *South African J. on Human Rights* 52.

acknowledgement of structural failures.⁵⁶ These 'safe' apologies,⁵⁷ as Maddux and colleagues suggest, are 'understood to be an expression of general remorse that is not necessarily diagnostic of blame or responsibility'.⁵⁸

Indeed, the motivation behind public apologies for HIA by Church and State representatives is often about the avoidance of blame or responsibility; such apologies are therefore concerned at best with expressing moral rather than full legal culpability. At the same time, however, apologies that express sympathy for wrongdoing but avoid any admission of responsibility may not be morally adequate.⁵⁹ Such strategic apologies are often considered 'worthless'⁶⁰ or mere 'rituals'⁶¹ within legal settings, thus becoming a 'commodity'⁶² that subverts the moral process. As Taft contends, 'when apology is cast into the legal arena, its fundamental moral character is dramatically, if not irrevocably altered'.⁶³ This is essentially because an apology that focuses on 'efficacy rather than contrition'⁶⁴ bypasses one of its core elements: the admission of wrongdoing. In this respect, this analysis contends that while official apologies should address responsibility for wrongdoing in both moral and legal terms, this dual commitment to redress should be given inherently and freely and without the need for adversarial legal proceedings.

Apologies can also be used to act as a 'full stop'⁶⁵ on the past, by closing down difficult conversations and obfuscating legal avenues of redress.⁶⁶ Moreover, within the legal arena, liability risk not only shapes the language and content of apologies but also their timing and the context in which they are delivered.⁶⁷ For example, in criminal or public inquiry settings, apologizing before formal legal proceedings can be inculpatory and negatively impact adjudication.⁶⁸ However, 'courtroom allocutions', where defendants apologize during sentencing after a finding of guilt, may be beneficial for them in terms of both mitigation⁶⁹ and garnering public support. Similarly, in civil court settings, including those related to HIA, apologies have also been used as a 'remedial tool' to secure more favourable outcomes for the defendant, such as reduced pecuniary damages.⁷⁰

⁵⁶ Bavelas, *op. cit.*, n. 49. See for example the expression of regret by Pope Benedict XVI in a pastoral letter to the Catholics of Ireland, 19 March 2010, condemning the clerical abuse but neglecting to acknowledge the institutional failures to protect children or to deal effectively with allegations.

⁵⁷ Taft, *op. cit.*, n. 3, p. 1151.

⁵⁸ W. M. Maddux et al., 'Cultural Differences in the Function and Meaning of Apologies' (2011) 16 *International Negotiation* 405, at 407.

⁵⁹ F. Bartlett, 'The Role of Apologies in Professional Discipline' (2011) 14 *Legal Ethics* 49.

⁶⁰ Levi, *op. cit.*, n. 41, p. 1178.

⁶¹ E. Goffman, *Interaction Ritual* (1955).

⁶² Taft, *op. cit.*, n. 3.

⁶³ *Id.*, p. 1136.

⁶⁴ *Id.*, p. 1148.

⁶⁵ P. Lundy and B. Rolston, 'Redress for Past Harms? Official Apologies in Northern Ireland' (2016) 20 *International J. of Human Rights* 104.

⁶⁶ M. H. Tanick and T. J. Ayling, 'Alternative Dispute Resolution by Apology: Settlement by Saying I'm Sorry' (1995) 6 *Hennepin Lawyer* 22.

⁶⁷ J. R. Cohen, 'Advising Clients to Apologize' (1999) 72 *Southern California Law Rev.* 1009.

⁶⁸ J. J. Rachlinski and A. Wistrich, 'Contrition in the Courtroom: Do Apologies Affect Adjudication?' (2013) 98 *Cornell Law Rev.* 1189.

⁶⁹ C. Gruber, *I'm Sorry for What I've Done: The Language of Courtroom Apologies* (2014).

⁷⁰ Alter, *op. cit.*, n. 21; J. J. Lewellyn, 'Dealing with the Legacy of Native Residential School Abuse in Canada: Litigation, ADR, and Restorative Justice' (2002) 52 *University of Toronto Law J.* 253.

The psychological literature on shame and guilt also provides useful insights in terms of the relationship between moral and legal culpability. Inner feelings of shame and guilt can often underlie the motivation to apologize, prompted by external pressures.⁷¹ While shame and guilt are traditionally considered interrelated ‘moral emotions’, the broad difference between them is that while the former focuses on general evaluation of the self, the latter focuses on specific behaviour towards others.⁷² For recent scholars such as Miceli and Castelfranchi, the criteria that distinguish shame from guilt relate, inter alia, to the type of self-evaluation involved – an awareness of inadequacy versus an awareness of harmfulness – and a focus on the perceived discrepancy between actual and ideal self versus a focus on the perceived responsibility for one’s fault.⁷³ In other words, shame is linked closely to identity⁷⁴ and how we may feel about ourselves and our actions, implying some personal consciousness of moral violation, whereas guilt arises from a more concrete awareness that our actions have harmed others and of the responsibility for specific wrongdoing and reparative action.

Apologies offer the possibility of resolving the moral emotions of shame and guilt and of relieving both victims/survivors and perpetrators of the emotional burdens of harm or offending.⁷⁵ Situated within the broader context of emotions and restorative discourses,⁷⁶ several studies have shown that recipients of apologies often prefer expressions of shame rather than of guilt.⁷⁷ While acknowledging the diversity of victims/survivors in terms of their emotions, and of experiences of abuse as well as of apologies, analysis of the primary data from this study highlights that within the HIA context, it is acceptance of ‘guilt-repair’⁷⁸ or ‘repair action tendencies’⁷⁹ that ultimately validates the authenticity of the apology for victims/survivors.

This article considers the particular barriers to accepting legal as well as moral responsibility within and surrounding apologies for HIA and how we might move from shame-focused mechanisms to guilt-focused mechanisms in addressing them. While it is undoubtedly important for victims/survivors of HIA that perpetrators accept moral culpability, ultimately it is the voluntary acceptance of legal culpability that underpins the transformative potential of apologies and transcends their symbolic function. I argue that it is the dual aspects of ‘moral’ and ‘remedial’ responsibility⁸⁰ – encompassing explicit acceptance of blame for past wrongs and the inherent infringement of rights, as well as the consequent responsibility for future corrective action via a

⁷¹ Lazare, op. cit., n. 53, ch. 6.

⁷² J. P. Tangney and R. L. Dearing, *Shame and Guilt* (2003).

⁷³ M. Miceli and C. Castelfranchi, ‘Reconsidering the Differences between Shame and Guilt’ (2018) 14 *Europe’s J. of Psychology* 710.

⁷⁴ M. Augoustino et al., ‘Apologizing for Historical Injustice: Emotion, Truth and Identity in Political Discourse’ (2011) 22 *Discourse & Society* 507.

⁷⁵ Wang, op. cit., n. 8; Lazare, op. cit., n. 53.

⁷⁶ S. M. Retzinger and T. J. Scheff, ‘Strategy for Community Conferences: Emotions and Social Bonds’ in *Restorative Justice: International Perspectives*, eds B. Galaway and J. Hudson (1996) 315; B. Van Stokkom, ‘Moral Emotions in Restorative Justice Conferences: Managing Shame, Designing Empathy’ (2002) 6 *Theoretical Criminology* 339.

⁷⁷ C. Kamau et al., ‘Reconciliation Responses, Blame, and Expressions of Guilt or Shame’ (2013) 43 *J. of Applied Social Psychology* 287.

⁷⁸ M. Chrdileli and T. Kasser, ‘Guilt, Shame, and Apologizing Behavior: A Laboratory Study’ (2018) 135 *Personal and Individual Differences* 304.

⁷⁹ Miceli and Castelfranchi, op. cit., n. 73, pp. 714–716.

⁸⁰ Miller, op. cit., n. 22; Thompson, op. cit., n. 30.

range of appropriate follow-through mechanisms – that unlocks the therapeutic or cathartic value of apologies as a tangible means of redress for victims/survivors of HIA.

3 | METHODOLOGY

Utilizing NI and the RoI as a case study, the aim of the wider project was to explore the way in which public apologies have been constructed, delivered, and received across three domains: (1) paramilitary violence, (2) HIA, and (3) the economic crisis. While the present article focuses on the single case study of HIA, these broader case studies were chosen as they represented three domains featuring an abundance of public apologies by State and non-State actors within NI and the RoI, and were thus ripe for rich analysis.

The fieldwork was informed by an extensive interdisciplinary literature review (see above). Over a period of approximately five years (June 2016 to November 2021), the research employed a multi-strand research methodology comprising (1) a bespoke archive of public apologies across the three domains over the last two decades; (2) focus groups with members of the public ($n = 14$) and with victims/survivors ($n = 9$); and (3) semi-structured interviews with key stakeholders across NI and the RoI ($n = 24$ related to HIA). The public focus groups comprised approximately six to ten participants and were conducted across NI and the RoI using stratified purposive sampling techniques to capture diverse populations (based on age, gender, class, and religious background).⁸¹ While members of the public were recruited via a market research company, victims/survivors were recruited either via victim/survivor organizations or the professional contacts of the researchers. In relation to the HIA interviews, there were an approximately equal number of ‘apologizers’ (including Church representatives, lawyers, and politicians) and victims/survivors of HIA (including victims/survivors and their families or their advocates/supporters).⁸² Interviewees were recruited initially via a purposive sampling strategy – based on who these key stakeholders were or what organization they represented – followed by a snowball sampling strategy whereby interviewees were asked to suggest other possible interviewees.

For the public focus groups, participants were asked a series of questions relating to their awareness, and perceptions of the importance and adequacy of public apologies across the three domains. For the victim/survivor focus groups and the individual semi-structured interviews, the aim was to seek the views of individuals who could speak to key public apologies or who were involved in apology processes. In light of potential risks to participants and researchers, a detailed ethical protocol was developed. This included researcher sensitivity in interviewing victims/survivors to avoid retraumatization, as well as adequate debrief and follow-up support services.

Datasets were transcribed and analysed thematically through NVivo software, enabling a comprehensive examination of emerging themes. Consistent with most qualitative research, data analysis incorporated both inductive (where theory emerges from the data) and deductive

⁸¹ Of the nine focus groups, only one was held with HIA victims/survivors due to ethical reasons; additional individual interviews were conducted instead.

⁸² Note that the research methodology also encompassed a public survey across every county in NI and the RoI ($n=1,007$). However, the findings from this element are not drawn upon here. For an analysis of some of the themes from the survey, see A. Bryson and M. MacCarthaigh, ‘Accounting for the Past: The Role of Public Apologies in Ireland’ (2021) *Irish Political Studies*, at <<https://pureadmin.qub.ac.uk/ws/portalfiles/portal/273039384/Apologies.pdf>>.

(where the data is assessed in light of existing theory) approaches.⁸³ Transcripts were initially blind coded and codes were agreed by the project team, with themes reviewed periodically.

It is important to note the dangers of essentializing victims/survivors, as well as members of religious congregations. For example, for some victims/survivors, no apology – no matter how meaningful or sincere – could ever assuage the often lifelong impact of abuses. The primary data, therefore, is presented thematically as a broad sample of experiences.

4 | APOLOGIES AND JURIDICAL TECHNIQUES OF REPUDIATION

As noted in the critical review of the literature above, a ‘legal apology’ is thought to comprise four basic elements; namely, it (1) specifies what was done, (2) accepts blame, (3) commits to non-recurrence, and (4) provides adequate redress.⁸⁴ Broad criticisms of official apologies for HIA emerging from the primary data reflected the dialectical opposite of each of these elements. These included (1) the use of strategic ambiguity via obfuscatory or euphemistic language that refuses to name the wrongdoing; (2) the refusal to accept institutional blame via the use of justification or excuses, and either what Dunne terms a ‘defeasibility’ strategy, claiming lack of knowledge and control of the problem, or a ‘scapegoating’ strategy, attributing blame to ‘errant clergy’;⁸⁵ (3) the refusal to make clear or commit to mechanisms of non-recurrence; and (4) the lack of follow-through on providing adequate redress to victims/survivors. Interviewees and focus group participants recollected examples of apologies by either the Church or the State that illustrated one or more of these strategies and that were used to repudiate legal responsibility for HIA. However, the predominant emphasis within narratives surrounding what could be termed ‘moral’ or ‘non-legal’ apologies related to the first and last of these techniques: the use of language to obscure or dilute agency, and the absence of wider follow-through actions. In addition, a third strategic element also emerged relating to the latent conflict between public and private modes of accounting for the past.

4.1 | The use of language

A small number of studies have examined the linguistic features of official Church apologies that are utilized to avoid or obscure agency and that have a ‘backgrounding effect’ in terms of accepting institutional responsibility for HIA.⁸⁶ These include, for example, the use of the passive rather than the active voice, and the corresponding avoidance of the ‘we’ or ‘I’ pronouns that would place the Church or their agents as the main subjects, as well as the deployment of particular grammatical phrases, such as ‘negative experiences’ or ‘indignities or injustices’ suffered.⁸⁷ Within this broader framework, analysis of the primary data highlighted how apologies are typically

⁸³ J. Fereday and E. Muir-Cochrane, ‘Demonstrating Rigor Using Thematic Analysis: A Hybrid Approach of Inductive and Deductive Coding and Theme Development’ (2006) 5 *International J. of Qualitative Methods* 80.

⁸⁴ Op. cit., n. 35.

⁸⁵ E. A. Dunne, ‘Clerical Child Sex Abuse: The Response of the Roman Catholic Church’ (2004) 14 *J. of Community & Applied Social Psychology* 491.

⁸⁶ See for example Bavelas, op. cit., n. 49, p. 8.

⁸⁷ Id.

formulated in one of two ways: they are either (1) framed in precise, legalistic, and parsimonious terms; or (2) contain the language of morality rather than of law.

As regards the first category, where law and legalese are used as tools of obfuscation, victims/survivors were very cognizant of official apologies being ‘scripted’ and apologizers ‘being careful that they weren’t liable’⁸⁸ and ‘choos[ing] their words very, very carefully of what way they apologize ... It’s all in the wording.’⁸⁹ Similarly, a lawyer representing victims/survivors referred to one case involving the formulaic construction and delivery of multiple letters of apology from a Catholic diocese to their client:

We got the letter of apology, the client perceived it to be insulting ... ‘I am sorry what you went through’ ... but the wording of it was very, kind of, detached from the actual abuse ... When the first letter arrived, we insisted on another one. One of the problems with it was it was stamped with X’s [Bishop’s] signature, it wasn’t an actual signature, and he [the client/victim/survivor] was really hurt by that ... It was typed up and it went to their [the Church’s] lawyers a couple of times ... Then I went back and just pointed out ... ‘This isn’t going to be acceptable, we will get the case back on then’. So they had to do it again.⁹⁰

Others were also highly critical of written apologies crafted by Church lawyers that are ‘couched in all kinds of bland legalese so that they can’t be picked up on anything’.⁹¹ A victims’ advocate who had worked with both victims/survivors and the Church recounted:

The worst attempt at an apology I have ever witnessed was crafted by a lawyer and it was just a disaster. It was a written apology and it was just so insensitive, so uncaring, so formal. Everything was written so that nothing was going to be given away.⁹²

This results in what victims/survivors deemed ‘legal apologies’⁹³ or ‘halfway house apologies’⁹⁴ and what lawyers termed a ‘lawyered-up version’⁹⁵ or a ‘qualified apology’,⁹⁶ where ‘an acknowledgement [of responsibility] ... comes with its own qualifiers’.⁹⁷ As one of these victims/survivors explained in the context of apologies given by religious orders:

I can remember in the very early days of the religious orders giving apologies in the Republic, the word ‘if’ was always in them. They were what I call ‘legal apologies’ and they apologized *if* they had done any harm. Well, you don’t apologize if, you apologize because.⁹⁸

⁸⁸ Focus group with HIA victims/survivors, Male 3, 12 November 2018.

⁸⁹ Focus group with HIA victims/survivors, Female 3, 12 November 2018.

⁹⁰ Interview 16, lawyer, 8 August 2018.

⁹¹ Interview 19, priest, 12 November 2018.

⁹² Interview 2, victims’ advocate, 28 November 2017.

⁹³ Interview 21, victim/survivor, 24 June 2019.

⁹⁴ Interview 17, victim/survivor, 24 September 2018.

⁹⁵ Interview 16, lawyer, 8 August 2018.

⁹⁶ Interview 10, lawyer, 20 April 2018.

⁹⁷ *Id.*

⁹⁸ Interview 21, victim/survivor, 24 June 2019.

The overall effect is the dilution of the authenticity of the apology for victims/survivors by focusing primarily on ‘human distancing’ from institutional responsibility as ‘the human aspect had been removed once the lawyers moved in’.⁹⁹

Turning to the second category, as I have discussed elsewhere, there are many examples of both Church and State apologies for HIA that use the moral language of shame.¹⁰⁰ For example, in the aftermath of public outcry and vociferous demands for his resignation over his handling of the Fr Brendan Smyth case¹⁰¹ several decades previously, Cardinal Sean Brady offered the following public apology:

This week, a painful episode from my own past has come before me ... I want to say to anyone who has been hurt by any failure on my part that I apologize to you with all my heart. I also apologize to all those who feel that I’ve let them down. Looking back, I am ashamed that I have not always upheld the values that I profess and believe in.¹⁰²

The type of self-evaluation within this apology is illustrative of the tension between shame and guilt – as related to moral and legal culpability – within the psychological literature discussed above.¹⁰³ That is, while this apology employs the rhetoric of shame in its professed recognition of the violation of religious ‘values’ and moral norms, it is inherently limited by its awareness of personal ‘failure’ or inadequacy rather than an explicit recognition of fault or responsibility for harm caused.

Similarly, many of the official State apologies for HIA, particularly in the context of Magdalen laundries¹⁰⁴ or mother and baby institutions,¹⁰⁵ have also been predicated heavily on the vernacular of shame. In both of these instances, accepting that the women were ‘blameless’ and that this was ‘a national shame’¹⁰⁶ or a ‘dark and shameful ... part of our national history’¹⁰⁷ provides at least a partial acknowledgement of collective State and organizational responsibility for past abuses. These types of apologies were well received by many victims/survivors, who described the State apology with regard to Magdalen laundries as ‘powerful’,¹⁰⁸ ‘meaningful’,¹⁰⁹ and ‘impactful’.¹¹⁰

⁹⁹ Interview 1, nun, 22 November 2017.

¹⁰⁰ A. M. McAlinden, ‘Apologies as “Shame Management”: The Politics of Remorse in the Aftermath of Historical Institutional Abuse’ (2022) 42 *Legal Studies* 137.

¹⁰¹ Fr Smyth was convicted in the early 1990s of over 100 counts of sexual offences against children across NI and the RoI over a 40-year period. In 2012, Cardinal Brady, then Catholic Primate of All Ireland, apologized publicly when it emerged that he had required two victims/survivors to sign an ‘oath of secrecy’ in the 1970s.

¹⁰² Apology during mass on St Patrick’s Day at Armagh Cathedral, 17 March 2010.

¹⁰³ Miceli and Castelfranchi, op. cit., n. 73.

¹⁰⁴ E. Kenny, *Dáil Debates*, 19 February 2013. State apology following publication of the McAleese Report: Department of Justice, op. cit., n. 25.

¹⁰⁵ M. Martin, *Dáil Debates*, 13 January 2021. State apology following publication of the *Final Report of the Commission of Investigation into Mother and Baby Homes*: Department of Children, Equality, Disability, Integration and Youth, *Final Report of the Commission of Investigation into Mother and Baby Homes* (2021), at <<https://www.gov.ie/en/publication/d4b3d-final-report-of-the-commission-of-investigation-into-mother-and-baby-homes/>>.

¹⁰⁶ Kenny, op. cit., n. 104.

¹⁰⁷ Martin, op. cit., n. 105.

¹⁰⁸ Interview 21, victim/survivor, 24 June 2019.

¹⁰⁹ Id.

¹¹⁰ Interview 10, lawyer, 20 April 2018.

However, one lawyer, who had also worked with victims/survivors, highlighted the limitations of such State apologies that are formulated around the moral syntax of stigma and shame:

It has got all this amazing language and ‘We were so wrong, and you were so wronged’ ... The weird thing about an apology is that with the language that is used, it can often overstate the actual mentality of the government. So, I think often it sets people up for absolutely massive disappointment ... It only gives temporary relief because ultimately the victims need legal redress.¹¹¹

As this quotation highlights, the use of the language of morality rather than of law or human rights can work to temporarily placate victims/survivors by giving the impression of state or organizational accountability while simultaneously limiting the guarantees of legal redress. Indeed, this same lawyer also referred to the legal ‘disconnect’ within these State apologies, which purportedly acknowledge the experiences of women but deliberately ‘lack any mention of rights’.¹¹² The semantical framing of apology is undoubtedly important for victims/survivors as well as wider society in terms of signalling moral violation and a collective consciousness of wrongdoing.¹¹³ However, it is ultimately the open acceptance of causing harm to others – including a violation of their human rights – and, linked to this, a commitment to tangible reparative action that signify the acceptance of both moral *and* legal responsibility for HIA.

4.2 | The avoidance of wider redress

A second technique commonly employed to circumvent legal responsibility for HIA, and a major theme arising from the study, was the lack of consistency following official apologies in terms of appropriate follow-through actions by both the Church and the State. That is, while apologies may constitute an acceptance of a personal violation of moral norms or values or that the actions were broadly wrong, they may explicitly lack an awareness of harm to others, including the violation of rights, and, with this, the responsibility for putting things right. In this sense, several scholars have underlined the importance of tangible reparations, where apologies without follow-through actions are regarded as ‘empty words’,¹¹⁴ ‘empty gestures’,¹¹⁵ or ‘apology lite’,¹¹⁶ potentially inducing secondary victimization. This notion was echoed in both stakeholder interviews and public focus groups. For victims’/survivors’ lawyers, senior political figures, and members of the public, ‘actions speak louder than words’ and an effective apology must be given as part of broader redress mechanisms:

There is no point in just giving an apology where you accept this was wrong. That means nothing to people.¹¹⁷

¹¹¹ Interview 20, lawyer, 17 May 2019.

¹¹² Id.

¹¹³ Miceli and Castelfranchi, *op. cit.*, n. 73.

¹¹⁴ A. Kendrick and M. Hawthorn, ‘Dilemmas of Care: Social Work and Historic Abuse’ in *Apologies and the Legacy of Children in ‘Care’: International Perspectives*, eds J. Sköld and S. Swain (2015) 172, at 177.

¹¹⁵ T. Govier and W. Verwoerd, ‘Taking Wrongs Seriously: A Qualified Defence of Public Apologies’ (2002) 65 *Saskatchewan Law Rev.* 139, at 146.

¹¹⁶ K. D. Wenger, ‘Apology Lite: Truths, Doubts, and Reconciliations in the Senate’s Guarded Apology for Slavery’ (2009) 42 *Connecticut Law Rev. CONNtemplations* 1.

¹¹⁷ Interview 16, lawyer, 8 August 2018.

An apology on its own is no good ... It is ... that range or suite of policy issues along with the apology.¹¹⁸

If it is not backed up by actions, it is worthless because that is how you test ... sincerity. You know, an apology, it is worthless without them.¹¹⁹

In this respect, ‘truth’ and access to birth and other records held by either the State or religious institutions remain pivotal issues for victims/survivors and their families as cases can be settled, including with an apology as part of a broader reparative package, ‘without giving the documents ... and the truth recovery that the clients so often just really need and want’.¹²⁰ In brief, therefore, in the words of two interviewees, the value of an apology should be ‘judge[d] ... on the action taken on the foot of an apology’¹²¹, where ‘the apology is not seen as an [isolated] event [but] ... as part of the system of fixing this’.¹²² In a very real sense, therefore, apologies represent the beginning rather than the end of wider redress processes, or what Coicaud terms ‘a significant conduit for justice’.¹²³ As one lawyer put it, ‘an apology is like Step Number 1 of a million steps that need to be taken to redress something structurally, to ensure non-repetition, to actually afford some dignity to people’.¹²⁴

The literature surveyed above also highlights how an apology can be used as a ‘full stop’¹²⁵ to close down difficult conversations about the past or to avoid public discourse on redress.¹²⁶ Consistent with this argument, several interviewees regarded apologies in a more cynical fashion, highlighting the notion of ‘a timetabled apology’¹²⁷ and how ‘it was much easier ... to do that than accept liability and be brought to court and all those things’.¹²⁸ A senior government official explained:

I think that when those advising institutions in times of crisis advise to apologize straight away, it’s because ... it shuts down public scrutiny because once you apologize, it is no longer a media story ... That is why I think the tendency now is to apologize first and then look at the consequences afterwards ... Whereas if you don’t apologize, the story rumbles and grows ... The subtext to that is ‘We are now moving on and we’re no longer discussing this issue because we have apologized for it’.¹²⁹

¹¹⁸ Interview 23, senior politician, 31 October 2017.

¹¹⁹ Public focus group, Fermanagh, Male 2, 23 January 2018.

¹²⁰ Interview 16, lawyer, 8 August 2018. See the Civil Registration (Right of Adoptees to Information) (Amendment) Bill 2021 in the RoI, which seeks to remove some of the barriers to accessing birth records.

¹²¹ Interview 7, senior government official, 7 February 2018.

¹²² Interview 10, lawyer, 20 April 2018.

¹²³ J.-M. Coicaud, ‘Apology: A Small Yet Important Part of Justice’ (2009) 10 *Japanese J. of Political Science* 93, at 94.

¹²⁴ Interview 20, lawyer, 17 May 2019.

¹²⁵ Lundy and Rolston, op. cit., n. 65.

¹²⁶ Tanick and Ayling, op. cit., n. 66.

¹²⁷ Interview 16, lawyer, 8 August 2018.

¹²⁸ Id.

¹²⁹ Interview 7, senior government official, 7 February 2018.

This highlights the use of apology as a tool of obviation to avoid accepting full legal responsibility for HIA, as well as its broader public and political utility as ‘performative redress’¹³⁰ in times of crisis. Moreover, as is explored further below, this also illustrates that the intended audience for public apologies addressing HIA is often not victims/survivors but wider society.

4.3 | The public/private divide

A third technique used to subvert legal responsibility for HIA related to the Church in particular, and reflecting the notions of audience and agency, concerns the preference of apologizers to give private rather than public apologies. In this respect, two intersecting dimensions emerged from the fieldwork: (1) the latent conflict between the Church’s acknowledgement of moral responsibility for HIA in public via official apology and their refusal to admit legal responsibility in subsequent private legal settings, and (2) the related potential cross-over between private and public modes of apology.

In relation to the first element, there is often stark inconsistency between a public apology and subsequent private actions in terms of accepting responsibility for HIA within the context of the adversarial legal system. There are multiple examples of specific attempts to avoid legal responsibility for HIA within redress discourses by the Catholic Church and the State in the RoI¹³¹ and elsewhere.¹³² This has occurred, for example, via the signing of waivers by individual victims/survivors against subsequent legal action as an explicit condition of an award of compensation, or *ex gratia* (no-fault) redress schemes, in which payments are made without the admission of legal responsibility, despite the violation of domestic and international legal norms.¹³³ In this vein, several interviewees referred to ‘hypocritical apologies’¹³⁴ that are ‘delivered out of context in the sense that everything else that was happening was so confrontational’.¹³⁵ Two lawyers, one on each side of the border, highlighted this tension between public acceptance of blame by the Church and the State respectively via an official apology and the ensuing private contestation of guilt and legal liability for HIA, which can often have a harmful impact on victims/survivors:

Although the Church want to say in public ‘We are so sorry for what we have put these people through, and we feel that we have to atone for this’ and ‘We will assist in every way we can’ ... you are going down to the High Court in a joint consultation with the Church’s lawyers and something happens ... So there is an awful lot of that – that

¹³⁰ Borneman, op. cit., n. 6.

¹³¹ J. Gallen, ‘Transitional Justice and Ireland’s Legacy of Historical Abuse’ (2020) 55 *Éire-Ireland* 35; M. O’Rourke and J. M. Smith, ‘Ireland’s Magdalene Laundries: Confronting a History Not Yet in the Past’ in *A Century of Progress? Irish Women Reflect*, eds A. Hayes and M. Meagher (2016) 107; op. cit., n. 27 and accompanying text.

¹³² See especially in the context of Canada and Australia: J. Cornstassel and C. Holder, ‘Who’s Sorry Now? Government Apologies, Truth Commissions, and Indigenous Self-Determination in Australia, Canada, Guatemala, and Peru’ (2008) 9 *Human Rights Rev.* 465; S. Winter, ‘Australia’s Ex Gratia Redress’ (2009) 13 *Aus. Indigenous Law Rev.* 49. In Australia, for example, the Catholic Church has ensured that Church property is held in separate corporate structures from religious orders, making it difficult for victims/survivors to obtain financial compensation: see *Trustees of the Roman Catholic Church v. Ellis and Another* (2007) 70 NSWLR 565.

¹³³ Op. cit., n. 31.

¹³⁴ Interview 2, victims’ advocate, 28 November 2017.

¹³⁵ Id.

kind of really hurts and even some of the letters, you know: ‘We don’t accept liability in this case.’ Well, you said publicly that you accept all these wrongs.¹³⁶

Even though the whole scheme was rooted [in] and founded [on] an apology by the State and a desire to give an apology, it was utterly redundant in that lady’s incidence and it did more damage. They attacked her again [at the State Redress Board hearings]. They raped her again ... Having brought her into that process, they actually, in my view, left worse damage than if they had done nothing at all.¹³⁷

Several lawyers and safeguarding professionals also spoke of the negotiation of legal liability via the ‘shuttling between rooms’¹³⁸ or the ‘horse trading’¹³⁹ that commences between respective teams of lawyers representing victims/survivors and the Church.¹⁴⁰

As regards the second element, the readiness of the Church to take full responsibility for past abuses in private via a personal apology is often juxtaposed with their unwillingness to admit responsibility in public settings due to the fear of legal liability. This theme was highlighted by both lawyers for victims/survivors and Church representatives in terms of the firm preference for oral apologies delivered in private:

I find that a lot. They [the Church] are very into pastoral meetings with victims and ‘Oh yeah, come around and meet up and we will talk this all through, and we will have cups of tea’. It is all very well accepting everything there, but whenever it comes to writing anything down in black and white, that is where the problem stems.¹⁴¹

If the individual case moves into the public arena, even a private apology becomes public, you know. Sometimes people will ask for a written apology and you have to realize that that ... could be used in other ways.¹⁴²

As discussed further, therefore, this theme also speaks to the need for consistency and subsequent follow-through actions in terms of accepting moral as well as legal responsibility for HIA in an official or public capacity.

Having examined some of the principal ways in which the Church has subverted legal or remedial responsibility for HIA, the discussion now turns to examine the legal and ideological barriers that may impede sincere apologies.

5 | BARRIERS TO ACCEPTING LEGAL RESPONSIBILITY FOR HIA

As noted above, within the literature on management and communication studies, the two principal factors constraining the Church from taking ownership of and accepting legal responsibility

¹³⁶ Interview 16, lawyer, 8 August 2018.

¹³⁷ Interview 10, lawyer, 20 April 2018.

¹³⁸ Id.

¹³⁹ Interview 9, safeguarding professional, 8 March 2018.

¹⁴⁰ Interview 20, lawyer, 17 May 2019.

¹⁴¹ Interview 16, lawyer, 8 August 2018.

¹⁴² Interview 15, senior clergyman, 22 May 2018.

for HIA relate to concerns about ‘crisis management’ or ‘reputation management’¹⁴³ and limiting liability, thus reducing financial compensation.¹⁴⁴ Other scholars have described this as ‘goal displacement’, as the primary aim of self-protection on the part of the Church – in terms of curtailing both the damage to their reputation and the extent of their liability – appears to be at cross purposes with their organizational mission of espousing Christian and moral values.¹⁴⁵ The empirical research broadly confirmed the existence of these barriers to accepting responsibility; in the words of victims/survivors, the reluctance to apologize was attributed to ‘self-preservation’¹⁴⁶ and fears concerning ‘an admittance of guilt, and therefore they’re liable in their pocket’.¹⁴⁷ However, the research also highlighted a more nuanced range of legal and ideological barriers that may prevent sincere and effective apologies for HIA. These three additional factors relate to the role of canon law, the role of lawyers, and concerns with multiple audiences.

5.1 | The role of canon law

The first barrier towards accepting legal responsibility via apology that relates to the Catholic Church is the role of canon law. ‘Canon law’ refers to the body of laws and legal principles, some dating back to the fifth century, that are made and enforced by the Church hierarchy and that govern the organization, their ecclesiastical practices, and the activities of the Catholic faithful.¹⁴⁸ Some scholars argue that canonical structures and rules have been instrumentalized politically by the Catholic Church to avoid taking responsibility for HIA.¹⁴⁹ Many others, however, contend that had the rules and principles of canon law been followed, in terms of investigating allegations of sexual abuse against children, then there would have been no clerical sexual abuse crisis.¹⁵⁰ In this sense, the findings of commissions of investigation into HIA both in the RoI¹⁵¹ and Australia,¹⁵² for example, have also established that supposed claims of self-regulation by the Church according to their own internal rules were used to evade the normative legal framework, in that suspicions or

¹⁴³ Hearit, op. cit., n. 16.

¹⁴⁴ Bavelas, op. cit., n. 49; A. Alfred, ‘Apology in Civil Law: A Psycho-Legal Perspective’ (2007) 14 *Psychiatry, Psychology and Law* 5.

¹⁴⁵ Barth, op. cit., n. 48.

¹⁴⁶ Interview 12, victim/survivor, 27 April 2018.

¹⁴⁷ Focus group with HIA victims/survivors, Female 3, 12 November 2018.

¹⁴⁸ J. A. Coriden, *An Introduction to Canon Law: Revised and Updated* (2019).

¹⁴⁹ T. P. Doyle, ‘Canon Law and the Clergy Sexual Abuse Crisis: The Failure from Above’ in *Sin against the Innocents: Sexual Abuse by Priests and the Role of the Catholic Church*, ed. T. G. Plante (2004) 25.

¹⁵⁰ J. J. Coughlin, ‘The Clergy Sexual Abuse Crisis and the Spirit of Canon Law’ (2002) 44 *Boston College Law Rev.* 977; T. W. Jones, ‘Sin, Silence and States of Denial: Canon Law and the “Discovery” of Child Sexual Abuse’ in *Interdisciplinary Feminist Perspectives on Crimes of Clerical Sexual Abuse*, eds K. Gleeson and T. W. Jones (2019) 34.

¹⁵¹ For example, the *Report of the Commission of Investigation into the Catholic Archdiocese of Dublin* concluded that clerical child sexual abuse was ‘covered up’ and that successive archbishops and bishops failed to report concerns to civil authorities: Department of Justice, *Report of the Commission of Investigation into the Catholic Archdiocese of Dublin* (2009) para. 1.113, paras 1.32–1.36, at <<https://www.justice.ie/en/JELR/Pages/PB09000504>>.

¹⁵² The Australian Royal Commission into Institutional Responses to Child Sexual Abuse found that nearly all of the institutions that it examined, including those run by the Catholic Church, had neither reported child sexual abuse to the civil authorities nor investigated allegations under canon law: K. Tapsell, ‘Civil and Canon Law on Reporting Child Sexual Abuse to the Civil Authorities’ (2019) 31 *J. for the Academic Study of Religion* 143.

allegations of abuse were neither investigated internally nor passed on to civil authorities. In brief, therefore, the historical response of the Church hierarchy to HIA has fallen between the two stools of secular and religious law. It is against this important historical backdrop of structural reticence to even acknowledge the existence of HIA in either moral or legal terms that official apologies on behalf of the Church have emerged.

A minority of research participants, including victims/survivors and members of the public, pinpointed the use of canon law or ‘self-made laws’¹⁵³ as a further technique of obfuscation whereby the Church operated ‘as if canon law was the law of the land’.¹⁵⁴ A lawyer representing victims/survivors recalled their experience in one case and referred to a ‘secret archive’ within the Catholic Church where any records of allegations or suspicions of abuse are held ‘under seal’.¹⁵⁵

It is in their canon law dialects ... [that] if a bishop is told something about ... another priest, then he has to adopt the doctrine of moral conscience, where he puts that to one side of his mind ... He also has to keep a secret archive of all these documents and has to keep canon entries within it. But in many cases that will never become public ... I think when I made my application for disclosure I mentioned this canon law regarding the secret archive and they just immediately wanted to meet me and talk about settling the case.¹⁵⁶

This quotation also highlights the potential structural tension between the functioning of ordinary public law processes and internal Church processes. On the one hand, the threat of formal legal proceedings may encourage the Church to acknowledge wrongdoing as part of what Bourdieu refers to as ‘the force of law’¹⁵⁷ – that is, accepting the power and ‘pull’ of legal regulation in terms of compliance. On the other hand, however, if allegations of abuse are kept secret within the framework of internal Church rules, then there is an intrinsic reluctance to admit publicly via apology the extent of institutional responsibility for HIA. In brief, as both lawyers and victims/survivors explained in relation to the Catholic Church, ‘within their own law they are protecting themselves’¹⁵⁸ and ‘they are quite capable of twisting it [the law] to protect their own positions’.¹⁵⁹ Internal Church ordinances are also reinforced by the deployment of lawyers and legal teams.

5.2 | The role of lawyers

A second factor that potentially works to impede the acceptance of legal responsibility by both the Church and the State for HIA is the role of lawyers themselves. Lawyers representing the State or the Church have a pivotal role to play in the construction of official apologies for HIA, in terms

¹⁵³ Interview 12, victim/survivor, 27 April 2018.

¹⁵⁴ Public focus group, Dublin 2, Male 1, 21 November 2017.

¹⁵⁵ This was also highlighted in the film *Spotlight* (2015), which portrayed the *Boston Globe*’s exposure of attempts to cover up allegations of abuse by the Boston Archdiocese.

¹⁵⁶ Interview 16, lawyer, 8 August 2018.

¹⁵⁷ P. Bourdieu, ‘The Force of Law: Toward a Sociology of the Juridical Field’ (1986) 38 *Hastings Law J.* 805.

¹⁵⁸ Interview 16, lawyer, 8 August 2018.

¹⁵⁹ Interview 22, victim/survivor, 24 June 2019.

of both minimizing or denying institutional agency and constraining victims'/survivors' expectations about future reparative actions. A number of interviewees, including victims/survivors, victims' advocates, and lawyers, reflected on their experience of dealing with the Church's lawyers and their 'agenda, which is to defend the Diocese from spurious allegations':¹⁶⁰

Lawyers get very worried about anything on paper ... and what the lawyers have said to me is 'I am here to defend you, the institution. My responsibility is to do that. It is not to facilitate the delivery of an apology as a means of helping, healing the victim, bringing about closure. That is not what I am about ... My expertise lies in making sure we don't give grounds.'¹⁶¹

They have all the top [lawyers], the canon lawyers ... They would write that [the apology] ... but they're very cloak and dagger and guarded, very guarded.¹⁶²

According to this view, 'the instinct of the lawyer will be not to apologize ... it's an unfortunate wiring of the DNA',¹⁶³ so inadequate and parsimonious apologies are just part and parcel of 'the lawyers doing their job'.¹⁶⁴

Similarly, in relation to the State, a senior politician explained that, even where there is an institutional willingness on the part of the State to engage fully with victims/survivors via apologies, State legal advisors may also work intrinsically to undermine this benevolent motivation:

Straightaway, legal people ... all the time you're trying to do something good, and they're trying to undermine it ... There would be more apologies and more sincerity about things if it wasn't for the abuses that are caused to the good ... The legal people are going to run a cart full over it and ... they do, unfortunately.¹⁶⁵

The net result is not only distancing from formal responsibility but also the erosion of the authenticity of the apology for victims/survivors and, as a result, an undermining of the moral as well as the legal validity of the apology.

While the literature examined above highlights how apologies are often more important to victims/survivors than financial compensation,¹⁶⁶ several lawyers underlined how the payment of compensation could be regarded as an 'implicit apology'.¹⁶⁷ In this sense, like an actual apology, it constitutes an acknowledgement to the victim/survivor that 'you have definitely proved your case',¹⁶⁸ thus providing a partial measure of ownership of responsibility. However, for one of these lawyers, who had represented victims/survivors at the State Redress Board hearings, the lack of an

¹⁶⁰ Interview 9, safeguarding professional, 8 March 2018.

¹⁶¹ Interview 2, victims' advocate, 28 November 2017.

¹⁶² Interview 12, victim/survivor, 27 April 2018.

¹⁶³ Interview 10, lawyer, 20 April 2018.

¹⁶⁴ Interview 16, lawyer, 8 August 2018.

¹⁶⁵ Interview 23, senior politician, 31 October 2017.

¹⁶⁶ Shuman, *op. cit.*, n. 38; N. Roht-Arriaza, 'Reparations Decisions and Dilemmas' (2004) 27 *Hastings International and Comparative Law Rev.* 157.

¹⁶⁷ Interview 10, lawyer, 20 April 2018.

¹⁶⁸ Interview 16, lawyer, 8 August 2018.

official apology, even at the end of the legal process, ‘was the elephant in the room afterwards’.¹⁶⁹ As Bartlett has highlighted, apologies may also have a role to play within the professional disciplinary ethics of law, where they may demonstrate ‘the ethical awareness of the lawyer’ and ‘affirm shared values’ in acknowledging malfeasance and breaches of codes of conduct.¹⁷⁰ Within the context of the present study, however, apologies by individual lawyers in cases of HIA, while partly indicative of their ethical character, related not to personal wrongdoing but to the perceived wrongdoing of those whom they represented.

The issuing of personal apologies by individual lawyers also affirmed their ethical consciousness in negotiating the complex moral and legal dimensions of the HIA space. In fact, as a result of disillusionment with official apologies and redress within the legal process, one lawyer described how they would expressly rely on an alternative moral discourse and often issue their own apology ‘as a form of words’ upon the payment of compensation to the victim/survivor at the end of a redress hearing:

Talking about the apologies, in terms of the formula of words, there was no formula of words. There was nothing to bring closure with respect to the hearings ... It comes to an end, then the victim doesn’t meet anybody else, doesn’t see anybody else and ... that’s when I would have said that ‘This is the offer and here are the formalities’ and then, as a final comment, ‘This is an acknowledgement on behalf of the State what wrongly was done to you’.¹⁷¹

Moving beyond the role of lawyers acting for Church and State authorities operating predominantly within the confines of secular law, an additional barrier to acceptance of moral and especially legal responsibility, and a primary concern in the formulation of apologies for HIA, is that of audience.

5.3 | Concerns with multiple audiences

A core theme arising from the primary data, which has resonance in the context of both Church and State apologies, is the potential ideological tension between placating internal and external audiences. Aside from several studies focusing on the impact of political apologies on victimized or non-victimized communities,¹⁷² the nuances and complexities of the theme of audience are largely neglected within the apologies literature. Within the context of the present study, the underlying connection with multiple audiences within Church apologies for HIA was related to a range of constituencies, including wider society, the Catholic faithful, the State itself, and, to a lesser extent, victimized communities and their families.

Benoit’s work on ‘image repair’ theory emphasizes that it is the audience’s potential perception of organizational wrongdoing that steers the choice of corrective strategy.¹⁷³ As such, apologies

¹⁶⁹ Interview 10, lawyer, 20 April 2018.

¹⁷⁰ Bartlett, *op. cit.*, n. 59, pp. 63–64.

¹⁷¹ Interview 10, lawyer, 20 April 2018.

¹⁷² *Op. cit.*, n. 32.

¹⁷³ Benoit, *op. cit.*, n. 16.

are often issued in response to public pressure as an option of last resort.¹⁷⁴ One victim/survivor voiced the institutional thinking behind apologies for HIA given by religious orders:

‘That’s what we are morally obliged to do. That’s what the public expects of us. It is not really that we want to give it or that we feel it. It’s that we know the crowds are screaming for it. So, we had better do it.’¹⁷⁵

In this vein, the majority of interviewees agreed that it is harder to get expansive apologies from the Catholic Church because, unlike the State, the Church is not subject to the principle of public accountability, and thought that the primary audience for official apologies for HIA was the wider public rather than direct victims/survivors. The motivation behind issuing what several victims/survivors termed ‘feigned’¹⁷⁶ or ‘tokenistic’ apologies¹⁷⁷ was attributed to ‘a quick tick-box exercise, you know, “[so] that we’ll look good”’.¹⁷⁸

However, such apologies aimed at the wider Catholic community may ultimately bypass the therapeutic needs of victims/survivors. As a victims’ advocate explained, highlighting the underlying rhetorical and performative aspect of apologies:

The apology is delivered for the public audience, for the whole of society. The person and people that need to receive it should be standing in front of you when you’re doing it ... If you had been a resident in one of the mother and baby homes and you saw some prominent Church man standing up and saying “This was terrible” and he was saying it on *Newsline*, on BBC; what would that matter? You would think ‘Well, why don’t you tell me? ... Am I meant to believe this? It doesn’t help.’ But they are saying it not for that audience, but for the wider audience.¹⁷⁹

Similarly, some victims/survivors attributed the institutional reluctance on the part of the Church to apologize for HIA to the need to avoid public shame and a negative self-image via the suggestion of ‘any dirtiness coming from their Church’.¹⁸⁰ Others, including victims/survivors and a lawyer who represented victims/survivors, also explained the Church’s reticence to apologize effectively for HIA with reference to concerns with both reputational and financial vulnerability stemming from their own internal audience:

The Church don’t really ever want to go public on abuse, because it affects their popularity ... All these scandals mean that nobody is giving money to the Church ... They can see their purse going down ... So, it is also to do with the public so that they will continue to go to mass and, you know, put their money in the basket.¹⁸¹

¹⁷⁴ T. Coombs, ‘An Overview of Challenges Facing Collective Apologies: Their Use in the Corporate World’ (2013) 86 *At the Interface/Probing the Boundaries* 229.

¹⁷⁵ Interview 21, victim/survivor, 24 June 2019.

¹⁷⁶ Focus group with HIA victims/survivors, Female 3, 12 November 2018.

¹⁷⁷ Focus group with HIA victims/survivors, Male 3, 12 November 2018.

¹⁷⁸ Focus group with HIA victims/survivors, Female 3, 12 November 2018.

¹⁷⁹ Interview 2, victims’ advocate, 28 November 2017.

¹⁸⁰ Focus group with HIA victims/survivors, Female 1, 12 November 2018.

¹⁸¹ Interview 16, lawyer, 8 August 2018. ‘Putting money in the basket’ refers to the ‘offertory promise’ during mass, where Catholics make a financial contribution to the salary of the priests and the upkeep of the parish.

They're always minding themselves and their Church and their money. It's all about money to them and how they're going to be seen by their congregations, because if they're seen in a worse light, then there's no money coming in – it's as simple as that.¹⁸²

In essence, therefore, the aim of the Church in issuing apologies is prudential rather than moral, as the motivation behind such actions is damage limitation or 'impression management' in the context of wider society. As such, apologies – as part of what Fish terms a 'rhetoric of regret'¹⁸³ – become a vehicle for the pursuit of these aims.

Similar motivations for failing to apologize in a legal sense for HIA were also attributed to the State. Indeed, interviewees and focus group participants also discerned a clear motivation on the part of the State behind the formulation and delivery of a 'generalized apology',¹⁸⁴ rather than one addressed directly to victims/survivors of HIA. In accordance with the literature surveyed above,¹⁸⁵ this was related to the need to avoid an admission of responsibility or wrongdoing in a legal sense, so as to limit potentially significant legal exposure to any redress scheme, rather than to express genuine contrition. As a senior government official explained:

A challenging question is whether the apology should be directed to the relatives, whether it should be directed to society at large and, you know ... Sometimes it's quite expedient for the State to apologize generally because of the fact that that then reduces any exposure to a redress scheme. If you apologize to a defined cohort of people, you become much more vulnerable in terms of a redress scheme, so you just wonder whether that influences thinking on who to target the apology at.¹⁸⁶

Finally, the State itself is also part of the Church's audience for apologies for HIA. As the same lawyer cited above explained:

It is probably about getting the government off their back as well. You know, a lot of it will be that they know down the line that there is going to be a redress scheme and that they are going to have to pay into it. So they want to be showing the government that they are co-operating fully with what the recommendations are and complying and looking good.¹⁸⁷

The inherent difficulty with apologies that seek to placate multiple audiences, however, is that they may circumvent the cathartic value of apology for victims/survivors as those directly harmed by HIA. In essence, a preoccupation with ensuring that apologies are multi-level may displace the core moral and restorative dimensions for victims/survivors in terms of the taking of responsibility for wrongdoing and the removal of self-blame from victims/survivors. Moreover, this need to either connect or avoid engagement with a multiplicity of constituencies impacted by HIA,

¹⁸² Interview 12, victim/survivor, 27 April 2018.

¹⁸³ S. Fish, *The Trouble with Principle* (2001) ch. 5.

¹⁸⁴ Focus group with HIA victims/survivors, Female 2, 12 November 2018.

¹⁸⁵ Taft, *op. cit.*, n. 3.

¹⁸⁶ Interview 7, senior government official, 7 February 2018.

¹⁸⁷ Interview 16, lawyer, 8 August 2018.

including victims/survivors and wider society, highlights not only the difficulties of balancing the moral and legal dimensions of apology but also the complex internal negotiation between the public/private dimensions in the choreography and delivery of apologies.

6 | CONCLUSION: TOWARDS REMEDIAL RESPONSIBILITY

While apologies are ‘key components of moral repair’,¹⁸⁸ as Cohen has suggested, they also have broader functionalist aspects in terms of reparative action and the promise of formal redress. This article has highlighted a range of juridical techniques deployed within official apologies for HIA, particularly those issued by the Catholic Church, to deny or dilute agency and circumvent legal responsibility for HIA. These relate to the use of language, the avoidance of tangible redress, and the preference for offering oral apologies in private rather than formal apologies in public. In addition, it has extended the literature, which has focused on concerns with ‘crisis management’ or ‘reputation management’ and limiting liability, by highlighting a more nuanced range of ideological and structural barriers to full and genuine apologies: the role of canon law, the role of lawyers, and concerns with multiple audiences.

In the course of this analysis, new classifications of apology have emerged, underlining the three cross-cutting themes of agency, action, and audience, and highlighting potential tensions between the moral and legal dimensions of apologies for HIA: a *qualified or lawyered-up apology* (providing partial acknowledgement of wrongdoing but specifically crafted to avoid any inference of agency or responsibility), a *timetabled apology* (carefully sequenced to circumvent fuller legal redress or action), a *hypocritical apology* (inconsistent with subsequent actions in legal settings), a *feigned or tokenistic apology* (designed to satisfy a public audience but failing to address the moral or affective needs of victims/survivors), a *generalized apology* (addressed to an unspecified audience with the aim of thwarting legal redress), and an *implicit apology* (where acceptance of agency or legal responsibility is evidenced through other remedial action, such as the payment of compensation). These types of apology convey the rhetorical or performative aspects of ‘non-apologies’,¹⁸⁹ which ‘say sorry’ without really apologizing or accepting responsibility.¹⁹⁰

This concluding section reflects on the indicative features of apologies that address both the moral and the legal dimensions of HIA within the context of ‘remedial responsibility’¹⁹¹ or ‘guilt-repair’ actions.¹⁹² Moreover, it also considers the wider therapeutic value of apologies within legal discourses as a means of not only symbolic but also tangible reparation at both the individual and the collective level.

In relation to the first issue, at a fundamental level, an apology for HIA that is indicative of remedial responsibility must address the dual moral and legal dimensions of wrongdoing. This entails a full and unequivocal acknowledgement of either personal or organizational wrongdoing, in terms of the violation of human rights, as well as of the consequent wider collective or institutional responsibility for repair. In brief, as one member of the public put it, ‘it has to be laid

¹⁸⁸ A. I. Cohen, ‘Vicarious Apologies as Moral Repair’ (2017) 30 *Ratio* 359.

¹⁸⁹ R. M. Eisinger, ‘The Political Non-Apology’ (2011) 48 *Society* 136.

¹⁹⁰ Bavelas, *op. cit.*, n. 49, p. 5, p. 7.

¹⁹¹ Miller, *op. cit.*, n. 22; Thompson, *op. cit.*, n. 30.

¹⁹² Chrdileli and Kasser, *op. cit.*, n. 78.

down in law'.¹⁹³ In practical terms, in the words of lawyer interviewees, this means 'a proper, all-encompassing apology'¹⁹⁴ that 'recognizes what was really done'¹⁹⁵ and 'tak[es] responsibility for the change that needs to happen'.¹⁹⁶ One lawyer offered an imaginary example of such an apology, specifically reflecting the notion of guilt-repair: "'We accept we did it. We are responsible ... We see how grave it was, how serious it is, and how much damage it did and we accept that we are now responsible legally for putting it right.'"¹⁹⁷

As the empirical analysis has demonstrated, reflecting the converse of each of the deficits of previous official apologies presented above, an effective apology for HIA, therefore, must (1) be expressed 'in plain, simple language that people can understand'¹⁹⁸ and not have 'any legalese or be in any way archaic';¹⁹⁹ (2) make explicit the extent of moral and legal wrongdoing, and consequently the intention for formal legal redress as 'the statement of principles for what is to happen next';²⁰⁰ and (3) represent consistency of message and action across both private and public settings. Furthermore, as a final element, individual victims/survivors, as those directly impacted by HIA, must be the primary audience when it comes to the scripting, choreography, and delivery of effective apologies.

In relation to the second issue, and the broader therapeutic value of apology, a pivotal and recurring issue within redress discourses on HIA relates to Church or State acceptance of organizational responsibility for historical wrongdoing by predecessors that they themselves did not commit. At the level of praxis, there is an elementary, unresolved conflict within apologies as a reparative response to HIA 'between the pastoral approach and the legal approach'²⁰¹ in terms of meeting the affective as well as the pragmatic needs of victims/survivors. Indeed, taking full responsibility for HIA via apology involves the apologizer exposing their vulnerability to victims/survivors in not only emotional terms but also broader reparative terms.²⁰² For Walker, this vulnerability, which lies at the heart of reparations, is expressed in primarily moral terms.²⁰³ Ultimately, however, for institutions such as the Church and the State to open themselves up to true remedial responsibility for HIA and address both the moral and the legal dimensions of apology, a choice must be made. As a judge expressed it, commenting on apologies and the attendant legal ramifications:

It reaches a stage ... where people have to make what I would describe as a policy or a political decision. They say to their legal representatives 'That's fine, but there are other broader considerations in play here than simply ensuring that our legal position is not undermined'.²⁰⁴

¹⁹³ Public focus group, Dublin 2, Male 3, 21 November 2017.

¹⁹⁴ Interview 16, lawyer, 8 August 2018.

¹⁹⁵ Interview 10, lawyer, 20 April 2018.

¹⁹⁶ Interview 20, lawyer, 17 May 2019.

¹⁹⁷ Id.

¹⁹⁸ Public focus group, Derry 2, Female 5, 29 January 2018.

¹⁹⁹ Interview 16, lawyer, 8 August 2018.

²⁰⁰ Id.

²⁰¹ Interview 9, safeguarding professional, 8 March 2018.

²⁰² M. Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (1999) 114.

²⁰³ M. U. Walker, 'Moral Vulnerability and the Task of Reparations' in *Vulnerability: New Essays in Ethics and Feminist Philosophy*, eds C. MacKenzie et al. (2014) 111.

²⁰⁴ Interview 4, judge, 9 January 2018.

In this sense, as Enright and Ring have argued, listening to victims/survivors and broadening the conditions under which they can be heard requires the State to not only self-shame but to open itself up to the 'risks' posed by victim/survivor accounts of the past, with attendant transformational benefits for the State, its citizens, and its laws.²⁰⁵ Indeed, apologies that encompass both moral and legal elements can also speak to a wider range of audiences where they have the potential to deliver therapeutically, at both the individual and the collective level.

In this respect, moving from shame to guilt, and negotiating the complexities of moral and legal responsibility for HIA, takes the discussion full circle back to the notion of 'performative redress',²⁰⁶ which is given a new and broader meaning. Viewed in this context, public apologies not only become a rhetorical acknowledgement of moral wrongdoing but also offer a firm 'mea culpa' for egregious human rights violations and, with it, a clear commitment to corrective action. In this vein, the potential therapeutic value of apology as a more expansive means of reparation within legal discourses has resonance in a number of respects. Situated within the context of 'therapeutic jurisprudence',²⁰⁷ apologies offer a means of providing what Scheff terms 'symbolic' as well as 'material' reparations for victims/survivors.²⁰⁸ They encompass restorative values through the expression of shame for moral violation on the part of perpetrators, thereby providing emotional healing and vindication for victims/survivors. They also invoke public law principles in terms of holding the state, or state-like organizations such as the Catholic Church, visibly to account for serious past wrongdoing and the violation of rights carried out in their name. Moreover, tangible and consistent mechanisms of redress following apology – such as open and unfettered victim/survivor access to personal records – also firmly evidence a public commitment to break with the past. Put simply, therefore, an apology that effectively countenances both the moral and the legal dimensions of responsibility for historical wrongdoing is one that explicitly and unambiguously acknowledges not only the abusive experiences of victims/survivors in the past but also the need to holistically address them in the present.

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²⁰⁵ M. Enright and S. Ring, 'State Legal Responses to Historical Institutional Abuse: Shame, Sovereignty, and Epistemic Injustice' (2020) 55 *Éire-Ireland* 68.

²⁰⁶ Borneman, op. cit., n. 6.

²⁰⁷ B. J. Winick, 'The Jurisprudence of Therapeutic Jurisprudence' (1997) 3 *Psychology, Public Policy, and Law* 184. Broadly defined, 'therapeutic jurisprudence', emerging from the field of mental health law, acknowledges the potential of law or legal processes to impact the well-being of citizens and society.

²⁰⁸ T. J. Scheff, 'Community Conferences: Shame and Anger in Therapeutic Jurisprudence' (1998) 67 *Revista Juridica (UPR)* 97.