

Commission to Inquire into Child Abuse – Was there hate crime against children with disabilities?

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Discussion and research into the identities of perpetrators and victims of crime is attracting growing attention in international organisations in Europe and the United States incorporating a new social dimension to our understanding of violence and criminal behaviour. The relationship between hate crime and the vulnerability of victims is a complex issue to which both legal and social studies can contribute. In the absence of wide ranging study on the question from the standpoint of people with disabilities in Ireland, alternative sources of identity based data are worthy of pursuit. The 2009 Report of the Commission to Inquire into Child Abuse provides an opportunity to explore whether children with disabilities in industrial schools, special schools and hospitals were victims of violence from the perspective of those children as adults.

I – Introduction

The 2011-2012 European debate on minimum standards for victims of crime offered an opportunity to rethink how people with disabilities are treated as victims of crime and whether some or all, if any of crimes perpetrated against them constitute a form of hate crime. Hate crime is defined by the European Agency for Fundamental Rights as:

Violence and crimes motivated by racism, xenophobia, religious intolerance or by a person's disability, sexual orientation or gender identity – often referred to as 'hate crime' are a daily reality throughout the European Union (EU), as data collected by the FRA consistently shows.¹

Hate crimes are acts which display a bias motive on the part of the perpetrator(s) based on the actual or perceived attributes of the victim. Disability is further specified in the UK as

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¹ European Union Agency for Fundamental Rights (FRA), *Making Hate Crime Visible in the European Union – acknowledging victims' rights* (Luxembourg: Office of Official Publications of the European Union, 2012) at 7.

“any disability including physical disability, learning disability and mental health.”² In this regard hate crime discussions are closely associated with the levels of tolerance, discrimination and prejudice in a society vis-à-vis specific characteristics of groups of persons. This was manifested in the European Member States conclusions on combating hate crime in the Europe in 2013 when they expressed “the clear link between promoting equality and fighting discrimination on the one hand and tackling hate crimes on the other.”³

According to the World Health Organisation (W.H.O.) “people with disabilities are at greater risk of violence than those without disabilities.” The prevalence of sexual abuse against people with disabilities have been shown to be higher, especially for institutionalised men and women with intellectual disabilities.⁴

Hate crime is often perpetrated against minorities based on their appearance, apparent sexual orientation, race or nationality, for example. People with disabilities, adults and children, may have invisible attributes that attract acts of crime and their victimhood is invisible within justice systems.⁵ Thus, already open to discrimination and prejudice, the status of people with disabilities as victims of crime doubles their vulnerability; this can be illustrated by examining the perspective of victims from Ireland to be found in the Reports of the Commission to Inquire into Child Abuse.⁶

² Home Office, Hate Crimes, England and Wales 2011 to 2012 available at <<https://www.gov.uk/government/statistics/hate-crimes-england-and-wales-2011-to-2012--2>> (date accessed: 7 July 2015).

³ Council of the European Union, Justice and Home Affairs Council meeting, Council conclusions on combating hate crime in the European Union, Bruxelles, 5 and 6 December 2013, at 1.

⁴ W.H.O. *World Report on Disability* (Geneva: W.H.O., 2011) at 59; K. Hughes, M. Bellis, L. Jones, S. Wood, G. Bates, L. Eckley, E. McCoy, C. Mikton, T. Shakespeare, A. Officer “Prevalence and risk of violence against adults with disabilities: a systematic review and met-analysis of observational studies” (2012) 379(9826) *The Lancet* 1621-1629.

⁵ S. Kilcommins, C. Edwards, T. O’Sullivan, *An International Review of Legal Provisions and Supports for People with Disabilities as Victims of Crime*, (Dublin: Irish Council for Civil Liberties, 2013) at 11.

⁶ Commission to Inquire into Child Abuse (C.I.C.A.), *Final Report of the Commission to Inquire into Child Abuse Report* Vols. 1-5 (Dublin: Stationary Office, 2009) [hereafter Commission’s Report]. <<http://www.childabusecommission.com/rpt/index.php>> (date accessed: 7 January 2013).

II - The Treatment of Victims – the European Union Discussion

Establishing a minimum standard across the European Union for victims of crime has prompted a formal discussion since 2011. Ireland has signed up to the Victims Rights Directive and must now implement it in the Irish legal system by 16 November 2015.⁷ The Directive arises from the Commission's *Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime*.⁸ The proposal for a Directive contained, amongst other articles, the suggestion of naming specific categories of victims as 'vulnerable'. This particular perspective was strongly rejected by the Economic and Social Committee of the European Union and the Council of Ministers.⁹ The views of the Council in the report of the Committee of Permanent Representative (C.O.R.E.P.E.R.) were that all victims should be assessed for vulnerability on a case by case basis to identify whether they are vulnerable or not due to their personal characteristics or the circumstances or the type or nature of the crime, and whether they might be subject to secondary and repeat victimisation if identified as vulnerable.

Following such an identification, then a suite of special measures and procedures would be made available to the victim if they so wished, including the right to protection from retaliation, intimidation, repeat or further victimisation. The then Minister for Justice Alan Shatter T.D. indicated that Ireland was likely to reject any advanced listing or pre-categorisation of victims on the grounds that it would not be operationally feasible.¹⁰

⁷ Directive 2012/29/E.U. of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime. For early statement of a commitment by Ireland to comply with Directive see Irish Council of Civil Liberties (I.C.C.L.) Conference, "EU Directive on Victim's Rights: Opportunities and Challenges for Ireland" (Dublin Castle, 12 April 2012) [hereinafter I.C.C.L. Victim's Rights Conference 2012].

⁸ European Commission, *Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime* (Brussels: European Commission, 2011) C.O.M./2011/0275 final.

⁹ European Economic and Social Committee (E.E.S.C.), *Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions — Strengthening victims' rights in the E.U.* C.O.M./2011/274 final, and on the *Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime* C.O.M./2011/275 final — 2011/0129 (C.O.D.) Official Journal of the European Union 2012/043/09, [hereinafter E.E.S.C. Report 2012]; Council of the European Union C.O.R.E.P.E.R., (Brussels: 9 December, 2011, Document 18241/11).

¹⁰ A. Shatter, "I.C.C.L. Victim's Rights Conference 2012" (Dublin Castle, 12 April 2012). <<http://www.iccl.ie/news/2012/04/12/shatter-faces-calls-to-%E2%80%9Cchampion%E2%80%9D-victims%E2%80%99-rights.html>> (date accessed: 5 January 2104).

The Economic and Social Committee rejected the notion of certain victims being particularly vulnerable and there was a risk of creating a hierarchy of victims. The Committee pursued the concept of universal individual assessment for vulnerability. The E.E.S.C. went on to state that “double victimisation and discrimination can occur where victims are targeted for abuse due to their ... disability ...” and expresses its concern that “many victims have suffered a lifetime of victimisation from being abused as children either at home or in the care of state funded and other institutions”.¹¹ The discussion has been amplified by the critical paper by Shane Kilcommins¹² in which he portrayed the victim as squeezed out from the Leviathan State versus the accused, and proposed that the victim be reinserted in a more balanced fashion into the matrix.

III - Some U.K. Experiences

In the UK the views of victims with disabilities were explored in The Trailblazers’ Hate Crime Report.¹³ The research conducted by young people themselves revealed that eight out of ten said they have been harassed, humiliated or embarrassed by a person’s attitude to them being a disabled person and 50 percent said they had been intimidated because they are a disabled person. A high proportion - two out of three - reported that they had been taunted or verbally abused because they are disabled. Some 62 per cent said that had been or may have been the victim of a disability hate crime.

While four out of ten young disabled people who had been harassed or abused, or were currently being harassed or abused, reported the incident to a person in authority, eight out of ten think that the police do not take disability hate crime seriously enough. A very high proportion 79 per cent of respondents to the survey think some disabled people may be dissuaded from reporting hate crimes because of the police’s negative perceptions surrounding hate crime and disability. In terms of information only 40 per cent of respondents were aware that harsher penalties are given for crimes motivated or aggravated by a victim’s disability.

¹¹ E.E.S.C. Report 2012, *supra* note 9 at 42.

¹² S. Kilcommins, “I.C.C.L. Victim’s Rights Conference 2012” (Dublin Castle, 12 April 2012).

¹³ Muscular Dystrophy Trailblazer’s Campaign, “Under Investigation – The Hate Crime Report” (2012) 7 Inclusion Now Series.

A campaign – Stand By Me - was launched by the UK non-profit organization M.E.N.C.A.P. in 2011 in order to heighten awareness of hate crime specifically among those with a learning disability. The campaign targeted police forces to change their practices in reporting and engaging with people with disabilities. A number of police forces adopted the proposals of M.E.N.C.A.P. and pledged to change their approach.¹⁴ More recently the Disability Hate Crime Network has been formed to provide advice to people with disabilities who are suffering from abuse and harassment.¹⁵ The network owes some of its inspiration to the author - Katherine Quarmby, of the book *Scapegoat: Why We are Failing Disabled People*.¹⁶

IV - Regulation and Inspection

In Ireland the hypothesis that people with disabilities might be more at risk of being victims of crime compared with other non-disabled people, has only recently surfaced in research and draft legislation.¹⁷ The neglect of regulation of institutions mandated by law, such as under section 38 of the *Health Act 2004*, or in a voluntary capacity (section 39) to offer services to children and adults with disabilities is not accidental. Rather it arises from the specific welfare regime which Ireland has adopted since the foundation of the State in 1922.

This was a welfare regime based on the principle of subsidiarity, whereby decisions and services should be taken and provided at the lowest feasible level of competent authority or unit of authority, such as the family, parish, local authority, non-state initiative. By adopting the principle of subsidiarity, the State took only a residual role in welfare initiation or provision when all else failed. Following the Second World War and the introduction of universal services in the U.K. such as the National Health Service, local authority housing, and comprehensive schools, Ireland remained aloof from these developments maintaining a strict continuity with the past. Children – destitute or disabled - were processed through the courts,

¹⁴ See <www.mencap.org.uk> (date accessed: 7 July 2015).

¹⁵ See <<http://DisabilityHateCrime.org.uk>> (date accessed: 7 July 2015).

¹⁶ K. Quarmby, *Scapegoat* (London: Portobello Books, 2011).

¹⁷ P. Conroy, "No safety net for children with disabilities in residential institutions in Ireland" (2012) 27(6) *Disability and Society* 809.

local authorities or health services and corralled without filter, into industrial schools, special schools, reformatories and convents. This continuity of thinking persists to the present day.

Centres for children with disabilities were specifically excluded from an inspection regime by the *Health Act 2007*, Schedule 2, Part 1 and the *Child Care Act 1991*, section 59(c). Eventually, section 59(c) was deleted in the *Childcare Act 2001* by Amendment 267 which removed the reference to residential centres for children with disabilities. However a further issue arose apparently as to whether the Health Information and Quality Authority (H.I.Q.A.) could inspect non-statutory services or whether this was a function reserved only for inspection regimes of the Health Service Executive (H.S.E.).

The Health Information and Quality Authority carried out work to prepare for eventual inspection of centres – statutory and non-statutory - for children with disabilities. They have done so with the help of research from the Social Services Inspectorate and the Children’s Research Centre in Trinity College Dublin.¹⁸ Inspections began in January 2014.

Change has been slow and the position of the care and treatment of young dogs comes to mind when reflecting on this. The *Dog Breeding Establishments Act 2012* and the *Welfare of Greyhounds Act 2012* both provided for standards, registration, inspection and closure of facilities in the case of puppies in. In Ireland, it has been better to be a puppy than a child with a disability.

V - The National Crime Victimization Survey in the U.S.A.

In the National Crime Victimization Survey (N.C.V.S.) of the U.S. Department of Justice, a crime is classified as a hate crime if the victim perceived that the offender was motivated by bias because the offender used hate language, left behind hate symbols or the police investigation confirmed that the incident – a single event - was a hate crime.¹⁹ In the N.C.V.S. 2009, about ten per cent of the victims reported that the perpetrator was motivated by

¹⁸ Children’s Research Centre and Social Services Inspectorate “Consulting with Children with Disabilities: Practical and Methodological Considerations” (Dublin: CRC, Trinity College Dublin, 2006) at 7.

¹⁹ L. Langton, M. Planty, *Hate Crime, 2003-2009: Special Report* (Washington D.C.: U.S. Department of Justice, Bureau of Justice Statistics, Office of Justice Programs, 2011).

hate due to their disability. The great majority base this on the language used rather than articles left behind or police confirmations. The surveys found that nearly 87 per cent of hate crime involved violence, of which 23 per cent involved serious violent crimes such as rape/sexual assault/robbery. Of interest is that a great deal of hate crimes were perpetrated in public places such as schools, parking lots, streets or public transport.

Among the different hate crime victimisations (race, ethnicity, sexual orientation and others), people with disabilities were the least likely to report their experience. Among male victims of hate crime about seven per cent believed the suspected motivation of the perpetrator was their disability. However among women, 15 per cent believed the motivation of the crime against them was their disability. Statistics on hate crime in the U.S. are also collected by the FBI from incidents of crime reported to the police. The two systems have different outcomes in results for people with disabilities. The National Crime Surveys (of individuals) report that about ten per cent of hate crime is among people with disabilities, while the F.B.I. Programme estimates only one per cent of hate crime is motivated by disability.

The U.S. State Department Bureau of Justice Statistics provides detailed evidence on persons with disabilities as victims of non-fatal violent crimes compared to persons without disabilities who had been victims of crime.²⁰ Their 2011 data is based on over half a million violent crimes against persons with disabilities living outside institutions such as nursing homes, hospices or prisons in 2010 extracted from the National Crime Victimization Survey. The survey reports on adults and children aged 12 and upwards and follows the passage of the *Crime Victims with Disabilities Awareness Act 1998 (1998 Act)*. The *1998 Act* directs the Department of Justice to collect data to “measure the magnitude of the problem” and “develop strategies for the safety and justice needs of victims of crime with developmental disabilities.”²¹

Some of their findings were that the rate of violent victimisation among persons with disabilities was almost twice the rate for persons without a disability. This was specifically so for children aged 12 to 15 years, whose rate declined somewhat between 2009 and 2010. Women with disabilities were more likely to be victims of violent crime compared with women

²⁰ E. Harrell, *Crime Against Persons with Disabilities 2008-2010 Statistical Tables* (Washington D.C.: U.S. Department of Justice, Bureau of Justice Statistics, Office of Justice Programs, 2011).

²¹ *Ibid* at 2.

without disabilities. Among persons with disabilities, those with cognitive disabilities had the highest rate of violent victimisation (see Table 1).

In 2010 the offenders were strangers to the victim in 33 per cent of cases against persons with disabilities but 41 per cent of persons without disabilities. In other words, people with disabilities were more likely to know their aggressor personally or as an acquaintance. About 17 per cent of persons with disabilities who were victims in 2010 reported that they believed they had been targeted due to their disabilities. When the attacks happened people with disabilities were just as likely as people without disabilities to resist the perpetrators including using non confrontational tactics such as yelling.

The violent crimes reported included weapons in many cases such as knives or firearms. The number of persons with disabilities facing aggressors with a firearm increased from 20 per cent of victims with disabilities in 2008 to 30 per cent in 2010. For those without a disability, the use of a firearm increased from 20 per cent in 2008 to only 21 per cent in 2010. From this it may be inferred that people with disabilities were increasingly likely to face an armed aggressor.

While the proportion of victims with and without a disability who suffered an injury has remained stable, the proportion of people with injuries and receiving medical care almost doubled in the short period between 2008 and 2010. This suggests that an attitudinal change has taken place either on the part of services or the victims or both.

	Hearing	Vision	Ambulatory	Cognitive	Self-care limitation	Limitation in Independent living
Rate per 1,000 Total	8.3	12.8	12.9	30.1	13.6	14.8
Serious violent crime	3.6	8.10	6.3	16.8	6.3	7.4
Simple assault	4.8	7.1	6.6	13.4	7.4	7.4

Table 1: Violent crime victimisation rate of persons with disabilities by type of disability 2010²²

²² E. Herrell, "Crimes Against Persons with Disabilities, 2008-2010 – Statistical Tables", (2011) Bureau of Judicial Statistics 1, Table 5 at 8 <http://www.bjs.gov/content/pub/pdf/capd10st.pdf> (date accessed: 7 July 2015).

In 2010, people with disabilities were much less likely to report a crime to the police than people with no disability including those who had experienced serious crimes like rape or sexual assault. There is some evidence that victims with disabilities were more likely to use victim advocacy agencies other than the police compared with crime victims with no disability.

VI - Awareness of Disability

One might ask whether there was an understanding of disability among children in the early parts of the last century in Ireland. There was knowledge as early as 1924 when the Department of Education was first established and decided that children with special needs should be educated separately from other children. The Cussen Report of 1934-1936 referred to industrial schools as being a suitable method of dealing with children suffering from disabilities.²³ During that decade it was also clear that children with learning difficulties were coming into the industrial and reformatory schools.²⁴ This was later confirmed by the Kennedy Report in 1972 which recommended a system of overcompensation in education for children – an attempt at an early conceptualisation of reasonable accommodation. The issue had also received at least intellectual circulation with the publication of the Report of the Commission of Inquiry into Mental Handicap in 1965. Even the *Children Act 1908* proposed the creation of an institution for the detention and treatment of children who would not normally merit committal to an industrial school or reformatory. This proposal did not proceed.

Added to this were the missing documents, files and data. The 2009 Commission reported that:

[A]lthough the Department had disclosed its historic archive to the Commission voluntarily, this archive did not contain the total number of files relevant to the work of the Commission. Files not included and identified by Mr Kelly SC were:

²³ C.I.C.A. Public Hearing, Transcript Day 226, 13th June 2006
<http://www.childabusecommission.ie/about/documents/transcript_public_day226_McManus_13th_june_2006.pdf> (date accessed: 7 January 2013) and *supra* note 1, Volume IV at para. 1.78-1.83.

²⁴ C.I.C.A. Public Hearing, Transcript Day 226, 13th June 2006.
<http://www.childabusecommission.ie/about/documents/transcript_public_day226_McManus_13th_june_2006.pdf> (date accessed: 7 January 2013).

- 27,000 pupil files;
- incomplete and early discharge papers;
- the working papers of the Kennedy working party;
- material separately held in safe storage within the Department;
- incident books;
- precedent books;
- miscellaneous files one would expect to find.²⁵

In the case of St Patrick's Industrial School in Kilkenny operated by the Sisters of Charity, the Department of Education acknowledged the resignation of the Sisters of Charity of their certificate authorising them to operate the industrial school with effect from November 1966. In July the Department of Health approved the school as a training centre for boys and girls with severe and moderate mental handicap. This, despite evidence of the Sisters that over the years children who had a mental handicap of sufficient severity were not admitted to St. Patrick's.²⁶

VII - The Confidential Committee of the Commission to Inquire into Child Abuse

The work of the Inquiry was carried out by two Committees of which one was the Confidential Committee. The Confidential Committee heard the stories and accounts of those who wished to offer testimony of their lives as children in the institutions. They were not seeking monetary compensation or redress and did not wish to be known publicly. The witnesses had resided in a variety of institutions.

Some 58 witnesses to the Confidential Committee reported abuse they had experienced as children in 'special schools' prior to the 1970s and up the 1990s. Of the 58 witnesses who attended segregated schools, 12 reported having no knowledge of their family of origin. All they had was their name. Their identity had been lost from the moment of their admission to an institution – a cruel forgetfulness.

²⁵ The Commission's Report, *supra* note 6, Volume IV at para. 1.193.

²⁶ C.I.C.A. Public Hearing, Transcript Day 60, 7 February 2005 at 59, <http://www.childabusecommission.ie/events/documents/7_2_05-St.Patricks.PDF> (date accessed: 7 January 2013).

Thirty one former hospital residents brought their accounts to the Confidential Committee. Among these, 23 had spent periods from two to ten years in 18 institutions described as hospitals. In addition to the witnesses who had been abused as children in schools and hospitals, there were survivors/witnesses who were Deaf or Blind. Twenty one complaints were made to the Commission's Investigation Committee concerning St Mary's School for Deaf Girls in the Cabra district of North Dublin. The Commission investigated in detail accounts of sexual abuse of children at St Joseph's School for Deaf Boys in Cabra, North Dublin, managed by the religious congregation known as the Christian Brothers. A total of 100 witnesses with disabilities or long term sickness complained of abuse.

The witnesses who came to the Tribunal's Confidential Committee complained of a wide range of physical, emotional and sexual abuse and neglect. Some of the former residents of the special schools were traumatised by witnessing or hearing violence against other children:

... and you could hear the screams, the screams, he was very violent. He was a big strong fit man, I was petrified of him, it came back to me in dreams, the dreams of it returned.²⁷

The abuse of children in hospitals was perpetrated by doctors, nurses, religious sisters and older patients. The former child patients described being used as 'exhibits' for visitors, teased, made fun of and being frightened by observing the treatments and deaths of other patients on wards, and having sweets and gifts sent from home removed from them and consumed by staff or distributed to other patients. A former child patient reported:

I remember one morning ... I was about five and I was sat up in the bed ... and I heard a voice behind and there's a very tall nun looking down on me and she's not pleased, I can tell by her face. She said I'd offended God, she called me a cripple. I remember it's the first time I was ever called a cripple ... [s]he said before I was fit to meet him (God) again, I'd have to be broken and she just picked me up out of the bed and she threw me

²⁷ The Commission's Report, *supra* note 6, Volume III at 241.

down onto the ground ... she'd just kick the shit out of me, picked me up and punched and beat me ... after that I kept very, very quiet ... invisible....²⁸

The Commission noted that an earlier report on boys from St Conleth' Reformatory School at Daingean, Co Offaly found that after Daingean "a surprising number went to Britain, where they finished up sleeping rough and declining into alcoholism. A large proportion went to other places of detention in Ireland or Britain."²⁹ A Brother who had worked at Letterfrack Industrial School in County Galway remarked pithily to the Commission:

The boys in Letterfrack were disturbed. How will I say this? If they weren't disturbed before they got to Letterfrack, they were disturbed when they got there the very fact of sending them there, they did become disturbed, they became sort of unhappy and quiet – not quiet – into themselves, introverted.³⁰

In this regard, the system of residential institutions and industrial schools injured and damaged the children. They literally impaired the children, generating disabilities where none had been present before. In that sense the treatment of children with disabilities cannot be confined to the special schools to which children are sent but to all institutions, be they hospitals or reformatories, where children are confined. The children were treated cruelly despite the various schools being managed by separate religious orders and congregations. Addressing the Report, President of Ireland Mary McAleese described the treatment of the children as "cruel, inhuman and degrading".³¹ The meagre inspection system of the State failed to identify the abuse and where it was reported to them, generally ignored the reports. This response is not unique to Ireland; it can be found also in Italy and the United States.

Peter Tyrell, a former child detainee at the age of eight, wrote in his memoir of the treatment of other boys at Letterfrack Industrial School, which was managed by the Christian Brothers:

²⁸ *Ibid* at 333.

²⁹ The Commission's Report, *supra* note 6, Volume I at 689.

³⁰ The Commission's Report, *supra* note 6, Volume I at para. 8.642.

³¹ P. McGarry "Findings demand focus on children – McAleese" *The Irish Times* (26 June 2009).

Boys who are not good looking or are in any way deformed, are laughed at, and ill-treated. Tom x a big lad for his age, has one leg, and is made to do serve duties and washing up and scrubbing floors etc. I have seen him beaten by (Brother) Vale on the stump of his bad leg.³²

Deaf witnesses described being forced to use oralist communication instead of Sign language as children:

I was very, very disappointed with myself, because I couldn't learn through oralism, and then they would hit you, if you didn't understand and so we pretended to understand to avoid being hit all the time.³³

We were punished for signing ... It was very, very difficult to control ... it was our language. It was the way we communicated. It was natural for us to use gestures. We were deaf.³⁴

There is the whole issue of ... (mannerisms) ... people have sort of mannerisms maybe, shaking backwards and forwards, you'd be beaten for that.³⁵

While the Congregation acknowledged that individual Brothers had sexually abused boys in their care, they insistently denied that it was systematic or a 'phenomenon.' The Commission concluded that:

[T]he management in Cabra failed to protect children from sexual abuse by staff. When complaints were made, they were not believed or ignored or dealt with inadequately. The level and extent of abuse perpetrated by one lay worker, as late as the 1990s, was an indication of the lack of proper safeguards [T]he investigation revealed a pattern

³² P. Tyrell, *Founded on Fear* (Dublin: Irish Academic Press, 2006) at 82. Peter Tyrell killed himself on Hampstead Heath, London, in 1966. His unpublished memoir which he had sent to his friend Owen Sheehy Skeffington was subsequently found in Ireland on the death of Sheehy Skeffington and published after his death.

³³ The Commission's Report, *supra* note 6, Volume III at 248.

³⁴ *Ibid* at 241.

³⁵ *Ibid*.

of physical and emotional bullying that made Cabra a very frightening place for children who were learning to overcome hearing difficulties.³⁶

VIII - Discerning Motivation

If hate crime is defined in part or in whole by motivation, the Commission to Inquire into Child Abuse has a lot to tell us. In general the witnesses appeared to accept that violence and punishment was a normal part of life. Their rationale in coming to the Commission's Confidential Committee was frequently more specific. They wanted to identify the persistent, arbitrary and unrelenting violence, assaults, humiliation and abuse. Adults wanted to recount acts that caused injuries and/or required hospitalisation or medical treatment as well as especially cruel, sadistic or vicious acts and incidents which they experienced or witnessed. Despite many witnesses attempting to report the violence and abuse there was a failure to stop the perpetrators.

The Reports of the Commission are, in this sense, the tip of the iceberg; the rest of the submerged iceberg the witnesses tended not to recount. The responses of the Religious Orders, Congregations and the Department of Education were very specific at the public hearings on these points and may be extracted from the Open Hearings of the Commission.

The Orders/Congregations in general denied any awareness then or now of the abuse or that their older members could recall any such acts or patterns when asked. If written evidence was provided by the Tribunal, or the representatives of the witnesses or in discovery of documents from the Inspections carried out internally by their own Orders or others, the Orders/Congregations conceded that discrete acts had taken place but that there was no pattern of abuse. The Orders/Congregations denied that the abuse was excessive or went over the line of justifiable acts. They generally claimed to have no records of punishments as required by the then Rules of the Department of Education. For its part, the Department of Education from its files could find no records of a pattern of excessive force, abuse, complaints or injuries to the children.

³⁶ The Commission's Report, *supra* note 6, Volume I at 578.

Arnold makes similar points in his analysis of the institutions:

[The Orders] had become comprehensively incapable of remembering a single occasion of wrongdoing, of brutality in punishment, of particular wrongs done by brothers or nuns whose names were frequently mentioned by different victims. They expressed no recall whatsoever. There had been no record of confessional reaction. There was no humility about what was done, no evidence available on the incontrovertible cases where the damage to men and women within the system had been sworn to and had been lifelong.³⁷

IX - But Why?

Why would 25 or more religious Orders and Congregations have persisted in treating children, and in particular those with disabilities, in such a neglectful and cruel fashion year in and year out? Why would they create additional injuries, impairments and disabilities to the children such that many left the country never ever returning and so many dying of mental oblivion through drugs and alcohol or by their own hand?

One explanation that merits at least consideration in the opinion of this author is that the adults who came before the Commission to Inquire into Child Abuse had been the victims of class hatred. The children were treated as pejoratively different and those with disabilities or differences were treated more harshly as visibly different.³⁸ As victims/witnesses who could in some instances, not see, others not hear, yet more not comprehend or in cases could not walk, the arbitrary nature of repeated assault and violence was a crime of hate. It would appear that at least some of those who perpetrated these crimes were only fractionally better educated and socialised than the children themselves.³⁹ Perhaps having someone 'other' to stamp on appeased

³⁷ B. Arnold, *The Irish Gulag – How the State Betrayed its Innocent Children* (Dublin: Gill and Macmillan, 2009) at 154.

³⁸ P. McDonnell, *Disability and Society – Ideological and Historical Dimensions* (Dublin: Blackhall Publishing, 2007) at 77-114.

³⁹ C. Clear in C. Curtin, P. Jackson, B. O'Connor, *Gender in Irish Society*, (Dublin: University College Dublin Press, 1987), pp 134-151. R. Cullen Owens, *A Social History of Ireland 1870-1970*, (Dublin: Gill and Macmillan, 2005) at 69.

their simmering own resentments. There were however unreformed and flagrant paedophiles acting in (in the opinion of this author, but not that of the Commission) concert.

Children reported to the Commission that a number of abuses and assaults were committed not by the religious but by visitors, weekend families, outdoor staff, friends of staff and local people. The hatred which the children attracted inside the residences and carried outside the residences was enjoined with that of the community milieu which opportunistically joined in the abuse of minors perhaps also as an expression of class hatred. We now know that rape is about the exercise of power relations. I could not find any reference in the Commission's volumes of accusations against the Gardai and this must be mentioned.

The class hatred might appear to have cast the children into the category of 'untermensch' or less-than – human-person, as national socialists described it. The untermensch need not have the dignity of cleanliness, any personal possession, they can be unnamed and be referred to by number or another name, they needs little to no education other than servility and obedience – he or she never rises above their status as 'gurrrier' or 'guttersnipe' or 'whore.'

X - And Apart From Class?

Is there another explanation other than class hatred of the lumpen proletariat - the wretched of the earth? It may well be that the ideological driver for so many different and separate religious Orders and Congregations to have behaved in the same cruel way was heresy. In the decade(s) after the French Revolution of 1798 groups of Catholic religious men and women fled from France, Belgium and elsewhere in Europe towards the island of Saints and Scholars. Irish-founded Orders and Congregations may have been influenced by this influx directly or indirectly by going abroad themselves. The heresy at issue is that of believing that we are damned at birth and can never be redeemed, resurrected, born again or called to God.⁴⁰ The children recounted being told that they were of bad blood, that they would come to

⁴⁰ T. Inglis, *Moral Monopoly – The Rise and Fall of the Catholic Church in Modern Ireland* (Dublin: University College Dublin Press, 1998) pp134-136. M. Raftery, O. O'Sullivan, *Suffer the Little Children- The Inside Story of Ireland's Industrial Schools* (Dublin: New Island, 1999) at 295.

nothing, that they carried their parents' decadent origins that they were beyond reform or redemption - they were not innocent. In this scenario, religious belief or devotion was futile and useless – one was damned ab initio and ad infinitum. In this heresy, we are not all part of the kingdom of God on earth: some are condemned to linger forever in Limbo or end up in hell.

XI Conclusion

The concept of a crime being carried out against a particular identity-based group such as people of a particular gender, race, nationality or sexual orientation has focussed attention on disability as a motivation or bias in crimes. While the responses in various legal jurisdictions are varied, the European Union is playing an important role in standardising or aligning Member State approaches to the subject. In the absence of comprehensive studies into the scale of crimes against people with disabilities, the Commission to Inquire into Child Abuse provides a partial proxy study from an historical perspective. The absence of such studies is undoubtedly related to the invisibility of people with disabilities within the criminal justice system.⁴¹ The Report of the Commission to Inquire into Child Abuse reveals that children with disabilities experienced physical abuse related to their disability and were singled out for this treatment. In the case of special institutions such as special schools for the Deaf or Blind, the abuse is the more reprehensible in that the children could not hear or see.

Some children without disabilities may have acquired psychological impairments due to their mistreatment. The Commission's Report confounds the view that children with disabilities in institutional confinement were treated with tenderness and charitable care. Hate crimes were committed against children with disabilities. The crimes have been described as abuse; a word that does not accurately embody the experiences of the survivors and witnesses.

“When the axe came into the forest – the trees murmured among themselves –
but then one of them said: ‘It’s O.K. - the handle is one of us.’”⁴²

⁴¹ S. Kilcommins, C. Edwards, T. O'Sullivan, *An International Review of Legal Provisions and Supports for People with Disabilities as Victims of Crime*, (Dublin: Irish Council for Civil Liberties, 2013) at 52.

⁴² Turkish proverb.