

Otherness and Violence in States, Christianity, and Institutions

2.1 INTRODUCTION

Organised violence is a central feature of the Christian tradition, the Roman Catholic Church, the British Empire, and nations such as the United States, Canada, Australia, the United Kingdom, and Ireland. Historical abuses within lived memory in these cases are the product of long-term, inter-generational attitudes and practices of empire – patriarchy, racism, classism, and violence – that were, in part, influenced by and justified through Christian theology and institutions. In turn, Christian churches, religious orders, and charitable organisations were among the perpetrators involved in historical abuses, achieved through the theological, moral, political, and legal condemnation of the ‘other’. This chapter offers a genealogy that demonstrates repeated patterns of exclusion, violence, and justification involving Christianity and Western European states and their settler colonies. A genealogical approach reflects how regimes of power and knowledge are assembled and reproduced.¹ Section 2.2 examines the relationship between Christianity and historical justifications for violence, with a particular emphasis on colonisation and slavery. Section 2.3 identifies the emergence of closed institutions as a key tool of nation-building that consolidated this early relationship of Christianity and violence but also extends to within living memory. Section 2.4 examines the nature of the violent abuses committed in these contexts, and Section 2.5 concludes.

2.2 CHRISTIANITY AND HISTORICAL VIOLENCE

From early in its existence, the Christian tradition reflected both a theological world view of inclusion and practices of liberation, and an opposing

¹ Kevin Ryan, *Social Exclusion and the Politics of Order* (Manchester University Press 2007) 44.

manifestation that aligned with contemporary power structures and systems of violence.² Though early Christian communities were originally subjected to persecution as an emergent religion in the Roman Empire,³ Christianity was made legal in 313 CE, and later became the official Roman imperial religion under the Emperor Constantine.⁴ This imperial form of Christianity subverted the original message of Jesus Christ and of early Christian communities and offered the means to justify empire and warfare through Christian theology.⁵ A succession of popes and papal Christianity, later the Roman Catholic Church, took explicitly imperial forms,⁶ as the notion of Christendom, the union between Christianity and material power, was evident from the fourth century.⁷

Even in this early period, Christian communities were aware of the risk of sexual abuse within the church, prohibiting sex between adult men and boys in the Council of Elvira in the fourth century.⁸ After the disintegration of the Western Roman Empire in the sixth century, conversion to Christianity continued to be used to provide a religious justification for organised political violence among the communities of Europe,⁹ for example in the missionary armed conflict of King Charles the Great (Charlemagne) against neighbouring Saxon peoples.¹⁰ In later centuries, violent Christianity found articulation in the nine Crusades into the modern Middle East by European armies.¹¹ In 1095, Pope Urban II launched the First Crusade and declared that war was not only just but holy and incentivised participation for Christians through the

² Rita Nakashima Brock and Rebecca Ann Parker, *Saving Paradise: How Christianity Traded Love of This World for Crucifixion and Empire* (Beacon Press 2008) 63.

³ Candida R Moss, *The Myth of Persecution* (Harper Collins 2014); WHC Frend, *Martyrdom and Persecution in the Early Church* (James Clarke & Company 2008).

⁴ Peter Brown, *The Rise of Western Christendom: Triumph and Diversity, A.D. 200–1000* (10th anniversary rev. edn, Wiley-Blackwell 2013) 74.

⁵ Karen Armstrong, *Fields of Blood: Religion and the History of Violence* (Alfred Knopf 2015) 248–9.

⁶ Rosamond McKitterick, 'The Popes as Rulers of Rome in the Aftermath of Empire, 476–769' (2018) 54 *Studies in Church History* 71.

⁷ Diarmaid MacCulloch, *Christianity: The First Three Thousand Years* (Penguin Books 2014) 1024–30.

⁸ Thomas P Doyle, AW Richard Sipe and Patrick J Wall, *Sex, Priests, and Secret Codes: The Catholic Church's 2000-Year Paper Trail of Sexual Abuse* (Volt Press 2006) 14.

⁹ Randall Lesaffer, 'Between Faith and Empire' in Martti Koskenniemi, Walter Rech and Manuel Jiménez Fonseca (eds), *International Law and Empire* (Oxford University Press 2017) 106.

¹⁰ Brock and Parker (n 2) 224, 238; G Ronald Murphy, *Saxon Savior: Germanic Transformation of the Gospel in the Ninth Century 'Heliand'* (Oxford University Press 1995) 11.

¹¹ Brock and Parker (n 2) 275.

removal of penance for sin for those who joined the Crusade, earning forgiveness for all their sins and assurance of a place in paradise after death.¹²

A second link between Christianity and organised violence emerged in 1231, when Pope Gregory IX's Inquisition licensed the church to use torture and execution to discipline those who were deemed heretics.¹³ Approximately 3,250 people were executed by inquisitions between 1231 and 1730,¹⁴ with a significant anti-Semitic targeting of Jews.¹⁵ During this medieval period, there is further evidence of clerical sexual abuse of children,¹⁶ with church law specifically prohibiting child sexual abuse.¹⁷ A third early form of Christian violence was against women in trials for heresy and witchcraft,¹⁸ often targeting women independent of patriarchal authority.¹⁹ Estimates of women killed for witchcraft vary between 35,000 and 100,000.²⁰

The later fragmentation of European Christianity through the Protestant Reformation contributed to protracted religious and sectarian violence among European communities and kingdoms. The competition between successive popes, kings, and Holy Roman Emperors led to frequent conflict and violence and to the Thirty Years' War.²¹ Stephane Beaulac notes that while originally based on religious antagonism, these conflicts were eventually dominated by the power politics of belligerents.²² The Peace of Westphalia in 1648 marks the beginning of Eurocentric conceptions of sovereign statehood in international affairs and the demise of supreme transnational and transcendental Christian

¹² *ibid* 254–78.

¹³ Karen Sullivan, *The Inner Lives of Medieval Inquisitors* (University of Chicago Press 2011).

¹⁴ Henry Kamen, *The Spanish Inquisition: A Historical Revision* (4th edn, Yale University Press 2014) 266; E. William Monter, *Frontiers of Heresy: The Spanish Inquisition from the Basque Lands to Sicily* (Cambridge University Press 1990) 53.

¹⁵ William Nicholls, *Christian Antisemitism: A History of Hate* (Rowman & Littlefield Publishers 2004).

¹⁶ Doyle, Sipe and Wall (n 8) 19–23.

¹⁷ Thomas Doyle and Stephen Rubino, 'Catholic Clergy Sexual Abuse Meets the Civil Law' [2004] *Fordham Urban Law Journal* 549, 582–3.

¹⁸ Alan Anderson and Raymond Gordon, 'Witchcraft and the Status of Women – The Case of England' (1978) 29 *The British Journal of Sociology* 171, 173.

¹⁹ Anne Llewellyn Barstow, *Witchcraze: A New History of the European Witch Hunts* (Pandora 1994) 21.

²⁰ Bengt Ankarloo, Stuart Clark and E. William Monter, *The Period of the Witch Trials* (University of Pennsylvania Press 2002); Barstow (n 19).

²¹ Ronald G. Asch, *The Thirty Years War: The Holy Roman Empire and Europe, 1618–1648* (Macmillan 1997); Geoffrey Parker and Simon Adams (eds), *The Thirty Years' War* (Routledge 1997).

²² Stephane Beaulac, 'The Westphalian Model in Defining International Law: Challenging the Myth' (2004) 8 *Australian Journal of Legal History* 181.

institutions as the dominant force in Europe.²³ Despite the beginnings of the early Christian churches as sites of equality and care for the poor and needy, the relationship of Christianity with empire, monarchy, and power led to significant violence justified in the name of Christianity against those deemed ‘other’.²⁴ This pattern would repeat itself in imperial colonisation and transatlantic slavery, justified in part by the salvation of the soul of the ‘other’ and possession of their lands and culture for Christ. These processes, in turn, provide the context and structure for historical abuses within lived memory.

2.2.1 Empire and Colonialism

Empire and colonialism were justified on several political, economic, and moral grounds, including Christian theologies linked to a view of the end of time, eschatology.²⁵ Brooke and Parker suggest that ‘Columbus’ expedition of 1492 sought . . . to plunder the riches of the environs of paradise, to bring about the conversion of the “Indians,” and to precipitate a Crusade to Jerusalem, where history would culminate’.²⁶ In 1493, the papal bull *Inter Caetera* authorised and sanctified Columbus’ expedition, with this ‘doctrine of discovery’ functioning as both a theological affirmation of conquest and a political and military mediation between colonial settler powers.²⁷

The logic of inquisitions and Crusades framing the non-Christian as ‘other’ continued in colonisation. Across diverse processes of colonisation,²⁸ ‘non-Europeans were conceptualised by Europeans in ways that dehumanised them and represented their cultures or civilisations as inferior’.²⁹ Several concepts of inferiority were used to justify this subjugation of the other, often designating the non-Christian as unequal or subhuman.³⁰

²³ Bruce Bueno de Mesquita, ‘Popes, Kings, and Endogenous Institutions: The Concordat of Worms and the Origins of Sovereignty’ (2000) 2 *International Studies Review* 93.

²⁴ Armstrong (n 5) 641.

²⁵ Kirsten T Edwards, ‘Christianity as Anti-Colonial Resistance?: Womanist Theology, Black Liberation Theology, and the Black Church as Sites for Pedagogical Decolonization’ (2013) 15 *Souls* 146, 151.

²⁶ Brock and Parker (n 2) 319.

²⁷ Mark Charles and Soong-Chan Rah, *Unsettling Truths: The Ongoing, Dehumanizing Legacy of the Doctrine of Discovery* (InterVarsity Press 2019) 35.

²⁸ Nicholas Thomas, *Colonialism’s Culture: Anthropology, Travel, and Government* (Princeton University Press 1994) 20.

²⁹ Paul Keal, *European Conquest and the Rights of Indigenous Peoples: The Moral Backwardness of International Society* (Cambridge University Press 2003) 83.

³⁰ Hayden White, ‘The Forms of Wildness: Archaeology of an Idea’ in Edward Dudley and Max Novak (eds), *The Wild Man Within: An Image in Western Thought from the Renaissance to Romanticism* (University of Pittsburgh Press 1972) 5.

These justifications for inferiority combined with existing patriarchal structures in European colonisers, suggesting particular inferiorities for non-Christian women.³¹

In designating non-Europeans and their societies as ‘other’, several religious justifications were used for colonisation, alongside commercial and political justifications.³² The Roman Catholic papacy granted Catholic kingdoms the right to colonise lands they ‘discovered’.³³ While English expansion took place by private actors such as the Virginia Company, it also included Christian motivations.³⁴ English claims to ‘discovered lands’ of now Australia, Canada, and the United States relied on whether the ‘discoverer’ was able to take possession of them.³⁵ This was despite the existence of systems of agriculture, housing, and ‘productive’ life among First Nations peoples.³⁶ Europeans claimed they were bringing salvation and civilisation to non-Christian peoples.³⁷ Martti Koskenniemi notes that while the majority of early Spanish theologians ‘agreed that the conquest had originally taken place in an unlawful manner, this did not lead them to advocate a speedy end to the presence of Spain in the New World’ but instead required them to ‘remain as trustees to protect the innocent and to preach the gospel’, with violence justified if the Indians persisted in human sacrifice or the harassment of priests.³⁸

The colonisation of the United States, Australia, and Canada can be understood as settler colonialism, with an ‘intention to permanently displace the Indigenous populations within their acquired territories’.³⁹ Patrick Wolfe

³¹ Evelyn Nakano Glenn, ‘Settler Colonialism as Structure: A Framework for Comparative Studies of U.S. Race and Gender Formation’ (2015) 1 *Sociology of Race and Ethnicity* 52; Scott Lauria Morgensen, ‘Theorising Gender, Sexuality and Settler Colonialism: An Introduction’ (2012) 2 *Settler Colonial Studies* 2.

³² Lauren Benton and Benjamin Straumann, ‘Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice’ (2010) 28 *Law and History Review* 1, 37; Stuart Banner, ‘Why Terra Nullius? Anthropology and Property Law in Early Australia’ (2005) 23 *Law and History Review* 95.

³³ Martti Koskenniemi, ‘Introduction’ in Martti Koskenniemi, Walter Rech and Manuel Jiménez Fonseca (eds), *International Law and Empire* (Oxford University Press 2017) 7.

³⁴ Carla Gardina Pestana, *Protestant Empire: Religion and the Making of the British Atlantic World* (University of Pennsylvania Press 2009).

³⁵ Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain and France c. 1500–c. 1800* (Yale University Press 1995).

³⁶ Bruce Pascoe, *Dark Emu: Aboriginal Australia and the Birth of Agriculture* (Scribe 2018) 156.

³⁷ Anthony Pagden, *The Fall of Natural Man: The American Indian and the Origins of Comparative Ethnology* (Cambridge University Press 1986) 39.

³⁸ Martti Koskenniemi, ‘Empire and International Law: The Real Spanish Contribution’ (2011) 61 *University of Toronto Law Journal* 1, 9.

³⁹ Sarah Maddison, ‘Indigenous Identity, “Authenticity” and the Structural Violence of Settler Colonialism’ (2013) 20 *Identities* 288, 288.

notes that ‘settler colonialism has both negative and positive dimensions. Negatively, it strives for the dissolution of native societies. Positively, it erects a new colonial society on the expropriated land base ... invasion is a structure not an event’.⁴⁰ The goals of settler colonialism to acquire land and gain control of resources were accomplished through direct acts of violence, the forced removal of Indigenous peoples from their lands, and biological and cultural forms of assimilation, such as inter-marriage and replacement of Indigenous culture with settler culture.⁴¹ Settler colonialism also had deeply gendered consequences, seeing gender differentiation, and female domesticity and dependency, as marks of civilisation.⁴² Across the national contexts affected by colonisation, a wide variety of harms are discussed below. Christianity was also used to justify the ‘second wave’ of nineteenth-century colonisation throughout sub-Saharan Africa and Asia through the use of ‘the standard of civilisation’.⁴³ Marimba Ani notes that for such colonisers ‘Christianity and civilization were inseparable’.⁴⁴ Regrettably, in-depth analysis of these forms of empire and colonisation is beyond the scope of this book. In considering the impact of colonialism, the Canadian Truth and Reconciliation Commission report concludes in terms that apply broadly:

The justification offered for colonialism – the need to bring Christianity and civilization to the Indigenous peoples of the world – may have been a sincerely held belief, but as a justification for intervening in the lives of other peoples, it does not stand up to legal, moral, or even logical scrutiny. The papacy had no authority to give away lands that belonged to Indigenous people. The Doctrine of Discovery cannot serve as the basis for a legitimate claim to the lands that were colonised, if for no other reason than that the so-called discovered lands were already well known to the Indigenous peoples who had inhabited them for thousands of years. The wars of conquest that took place to strip Indigenous peoples of their lands around the globe were not morally just wars; Indigenous peoples were not, as colonists often claimed, subhuman, and neither were they living in violation of any universally agreed-upon set of values. There was no moral imperative to impose

⁴⁰ Patrick Wolfe, ‘Settler Colonialism and the Elimination of the Native’ (2006) 8 *Journal of Genocide Research* 387, 388.

⁴¹ Glenn (n 31) 57.

⁴² *ibid* 70.

⁴³ Keal (n 29) 29; Gerrit W Gong, *The Standard of ‘Civilization’ in International Society* (Clarendon Press 1984).

⁴⁴ Marimba Ani, *Yurugu: An African-Centered Critique of European Cultural Thought and Behavior* (Africa World Press 1994) 154.

Christianity on the Indigenous peoples of the world. They did not need to be 'civilized'; indeed, there is no hierarchy of societies.⁴⁵

The justifications offered for colonisation and empire merged theology, commerce, law, and politics to create and impose dominant and oppressive narratives and practices, based on the false 'othering' of non-Christian peoples. In addition, Christianity also merged with commercial and imperial interests to legitimate the practice of slavery.

2.2.2 *Slavery*

Slavery is one of the longest-standing forms of human violence, predating Christianity and found across a range of cultures and traditions.⁴⁶ The justification of the trade in slavery from Africa draws on the same logic and processes as the Crusades and colonisation processes,⁴⁷ through the perceived inferiority of enslaved peoples and through the perceived commission of sin by non-Christians.⁴⁸ Popes in the 1400s saw enslavement as an instrument for Christian conversion and endorsed the Portuguese shipment of African slaves back to Europe.⁴⁹ On 18 June 1452, Pope Nicholas V issued the papal bull *Dum Diversas*, which identified Saracens (Muslims) and pagans as targetable for 'perpetual slavery'.⁵⁰ The logic of settler colonialism, seeking to exploit land and resources and replace a native population, gave rise to the use of slavery as a means of achieving this.⁵¹ Subsequently, the transatlantic slave trade populated colonies in the Americas. It is estimated that at least 12 million Africans were shipped across the Atlantic,⁵² with more killed in transit. The majority of slaves went to Brazil or the Caribbean, with approximately 300,000 captives coming to the now United States.⁵³ In addition, slavery also affected

⁴⁵ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The Final Report of the Truth and Reconciliation Commission of Canada, Volume 1, Part 1* (McGill-Queen's University Press 2015) 24.

⁴⁶ Keith Hopkins, *Conquerors and Slaves* (Cambridge University Press 1981).

⁴⁷ Brock and Parker (n 2) 324.

⁴⁸ David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (Oxford University Press 2006) 50.

⁴⁹ *ibid* 54.

⁵⁰ Charles F Irons, *The Origins of Proslavery Christianity: White and Black Evangelicals in Colonial and Antebellum Virginia* (University of North Carolina Press 2008) 1.

⁵¹ Glenn (n 31) 67.

⁵² Paul Lovejoy, 'The Impact of the Atlantic Slave Trade on Africa: A Review of the Literature' (1989) 30 *Journal of African History* 365, 368, 372.

⁵³ Daina Ramey Berry, *The Price for Their Pound of Flesh: The Value of the Enslaved, from Womb to Grave, in the Building of a Nation* (Random House 2018).

Native Americans. Allan Gally estimates that between 1670 and 1715, 24,000 to 51,000 Native Americans were exported to then Spanish Florida and to the West Indies to work in sugar cane plantations.⁵⁴

Michelle Alexander notes that the concepts of race and white supremacy emerged in the American colonies ‘as a means of reconciling chattel slavery – as well as the extermination of American Indians – with the ideals of freedom preached by whites in the new colonies’.⁵⁵ She suggests that the planter class granted poor whites access to lands and roles policing slaves, which ‘effectively eliminated the risk of future alliances between black slaves and poor whites. Poor whites suddenly had a direct, personal stake in the existence of a race-based system of slavery’.⁵⁶ In addition, Alexander argues that Southern slaveholding colonies agreed to form a union, on the condition that the federal government would not interfere with their right to own slaves as property. As a result, the US Constitution constructed a federal government weak in its relationship to both private property and states’ rights and deliberately colour-blind.⁵⁷

While Christianity had been one of the bases for legitimating chattel slavery, the abolitionist role of non-institutional Christian churches and faith movements, such as Methodists and emergent evangelicalism, is notable, in contrast to more established state churches with greater links to the slave trade or slave ownership in the United Kingdom or the United States.⁵⁸ In ending the slave trade in England, reparations were provided to *slave owners* as compensation for loss of their property, to the cost of £20 million (the equivalent of £16,782 million in 2008).⁵⁹ In addition, Mark Noll views debates about slavery in the United States leading to the American Civil War as profoundly theological in nature,⁶⁰ with proponents on both sides of the war ‘reassuring combatants on either side that each enjoyed a unique standing before God and each exercised a unique role as the true bearer of the nation’s

⁵⁴ Alan Gally, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670–1717* (Yale University Press 2002) 299.

⁵⁵ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New Press 2012) 23.

⁵⁶ *ibid* 25.

⁵⁷ *ibid* 25–6.

⁵⁸ Jenny S Martinez, *The Slave Trade and the Origins of International Human Rights Law* (Oxford University Press 2012) 17; Leo D’Anjou, *Social Movements and Cultural Change: The First Abolition Campaign Revisited* (Aldine de Gruyter 1996) 198.

⁵⁹ Marika Sherwood, ‘The Trade in Enslaved Africans and Slavery after 1807’ in Fernne Brennan and John Packer (eds), *Colonialism, Slavery, Reparations and Trade: Remediating the ‘Past?’* (Routledge 2012) 28.

⁶⁰ Mark A Noll, *The Civil War as a Theological Crisis* (University of North Carolina Press 2006).

Christian civilization'.⁶¹ In the absence of theological resolution to the question of slavery in the United States, violent civil war sought to resolve the issue of slavery by force and by law.

In the post-Civil War period known as Reconstruction, as Alexander notes,

federal civil rights legislation was passed, including the Thirteenth Amendment, abolishing slavery; the Civil Rights Act of 1866, bestowing full citizenship upon African Americans; the Fourteenth Amendment, prohibiting states from denying citizens due process and 'equal protection of the law'; the Fifteenth Amendment, providing that the right to vote should not be denied on account of race; and the Ku Klux Klan Acts, which declared interference with voting a federal offence and the violent infringement of civil rights a crime.⁶²

However, a lack of meaningful enforcement of federal rights rendered some of these protections 'largely illusory – existing on paper but rarely to be found in real life'.⁶³ Instead, racism and discrimination were reproduced in forms beyond slavery. Southern states began a campaign to 'redeem' the South, weakening new legal protections in a context of renewed racial violence and a resurgent Ku Klux Klan,⁶⁴ resulting in the withdrawal of federal troops from the South and effective abandonment of African Americans. In this new system of racial social control, known as 'Jim Crow', Southern legislatures adopted 'black codes' designed to minimise the post-Civil War effect of emancipation by creating legal forms of racial segregation in transport and education.⁶⁵ These states adopted vagrancy laws, criminalising unemployment and targeted at blacks,⁶⁶ and eight of those states enacted convict laws, forcing prisoners to work for little or no pay for plantation owners and private companies.⁶⁷ Ira Katznelson notes that the Jim Crow South was indulged in early twentieth-century federal law making, such as the New Deal, which excluded farm workers and domestic servants from old age insurance, rendering 65 per cent of African Americans nationally and between 70 and 80 per cent in the South ineligible.⁶⁸ Alexander

⁶¹ *ibid* 21.

⁶² Alexander (n 55) 29.

⁶³ *ibid* 30.

⁶⁴ *ibid*.

⁶⁵ *ibid* 28.

⁶⁶ Kristin O'Brassill-Kulfan, *Vagrants and Vagabonds: Poverty and Mobility in the Early American Republic* (New York University Press 2019).

⁶⁷ Douglas A Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (Anchor Books 2009).

⁶⁸ Ira Katznelson, *Fear Itself: The New Deal and the Origins of Our Time* (1st ed, Liveright Publishing Corporation 2013) 156–94.

concludes that by the twentieth century, Southern states had a broad range of laws enabling discrimination against African Americans in every sphere of life.⁶⁹

Throughout these contexts of colonialism and slavery, we can find the use of Christianity in the name of violence, oppression, and domination and as a basis for resistance, emancipation, and liberation. As the secularisation of the Western world increased throughout the Enlightenment, scientific thinking and liberal politics grew in influence across the English-speaking world.⁷⁰ Nonetheless, closed and coercive institutions, involving a combination of states and churches, played a role in the construction and constitution of society and were key sites of more recent historical abuses within lived memory.

2.3 INSTITUTIONS AND ABUSES

Closed state- and church-run institutions emerged to address people and groups perceived as ‘other’ and as social problems,⁷¹ beginning with the poor, then extending to specific cross-sections of society. To understand this period, David Nash suggests we concentrate on how religion is used to justify world views and the role of specific actors within that context.⁷² Shurlee Swain notes that both Anglican and Catholic denominations, ‘sanctioned a view that saw the poor as being responsible for their own fate’.⁷³

In Britain and Ireland, the Poor Laws started the process of institutionalisation.⁷⁴ The first Poor Law in 1531 enabled local authorities to round up child vagrants and beggars and put them to work in apprenticeships.⁷⁵ A 1647 Poor Act began the process of workhouses for the poor, which later involved the training of children for industry and trades while compulsorily detained.⁷⁶

⁶⁹ Alexander (n 55) 35.

⁷⁰ Callum G Brown, *The Death of Christian Britain: Understanding Secularisation, 1800–2000* (2nd ed, Routledge 2009); Sheridan Gilley, ‘Christianity and Enlightenment: An Historical Survey 1’ (1981) 1 *History of European Ideas* 103.

⁷¹ Law Commission of Canada, *Restoring Dignity: Responding to Child Abuse in Canadian Institutions* (Law Commission of Canada 2000) 3; Eoin O’Sullivan and Ian O’Donnell (eds), *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester University Press 2012) 258.

⁷² David Nash, ‘Reconnecting Religion with Social and Cultural History: Secularization’s Failure as a Master Narrative’ (2004) 1 *Cultural and Social History* 302, 318.

⁷³ Shurlee Swain, ‘Do You Want Religion with That? Welfare History in a Secular Age’ (2005) 2 *History Australia* 79.1, 79.4.

⁷⁴ Ryan (n 1) 51.

⁷⁵ Brian Corby, Alan Doig and Vicki Roberts, *Public Enquiries into Abuse of Children in Residential Care* (Jessica Kingsley 2001) 15.

⁷⁶ *ibid* 16.

The Poor Relief (Ireland) Act 1838 established a system of workhouses throughout the country.⁷⁷ Workhouses existed in the United Kingdom until 1948 when the National Assistance Act and the National Insurance Act 1946 ended the Poor Laws.

Ryan notes that at the end of the eighteenth century, the UK poor houses were criticised as too expensive, ineffective, and sites of disease and immorality.⁷⁸ Subsequent specialist institutions emerged for women and children.⁷⁹ Regarding children, the function of institutions such as industrial schools was to prevent the negative traits of the ‘other’ from passing into the next generation.⁸⁰ Regarding the institutionalisation of women, Carol Smart notes that while law had long sought to regulate women’s sexuality and reproduction, the nineteenth century marks ‘a specific moment of struggle over the use of law to regulate the feminine body’.⁸¹ In addition to continuing religious justifications for problematising the ‘other’, De Groot suggests that in this period ‘theories and practices related to “race” and “sex” drew on biological, anthropological, and medical scholarship’.⁸² Rather than exclusively pursuing strategies of elimination, as had been dominant with colonial conquest, the rise of institutions reflects a change in state and religious thinking in the potential for incarceration, coercion, and punishment as a form of personal transformation of those deemed ‘other’.⁸³

2.3.1 Residential Schools

Industrial schools were proposed as a solution to poverty in Britain and Ireland, based on a model adopted in Germany, Switzerland, and Scandinavia. Reformatory schools were established in 1858 for children found guilty of criminal offences under the British Poor Law. Jane Barnes states that industrial schools had two objectives: to train children ‘to be capable of

⁷⁷ ‘The Commission to Inquire into Child Abuse Report’ (Government Publications 2009) para 2.01.

⁷⁸ Ryan (n 1) 55.

⁷⁹ Robert Van Krieken, ‘The “Stolen Generations” and Cultural Genocide: The Forced Removal of Australian Indigenous Children from Their Families and Its Implications for the Sociology of Childhood’ (1999) 6 *Childhood* 297.

⁸⁰ Nancy Fraser and Linda Gordon, ‘A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State’ (1994) 19 *Signs* 309.

⁸¹ Carol Smart, *Regulating Womanhood* (Routledge 1992) 13.

⁸² Joanna De Groot, ‘“Sex” and “Race”: The Construction of Language and Image in the Nineteenth Century’ in Susan Mendus and Jane Rendall (eds), *Sexuality and Subordination: Interdisciplinary Studies of Gender in the Nineteenth Century* (Routledge 1989) 92–3.

⁸³ Linda Mahood, *Policing Gender, Class, and Family: Britain, 1850–1940* (UCL Press 1995) 78.

supporting themselves by honest labour' and to reform the child's character away from a family's bad influence.⁸⁴ The Children Act 1908 provided that each school was to be independently managed, though subject to state inspection and funding.⁸⁵ Brian Corby et al suggest that in the United Kingdom provision was made for 100,000 children in the nineteenth and twentieth centuries under this and related systems.⁸⁶ By 1911, there were 112 industrial schools operating in England and Wales, with a majority run by charitable and religious groups.⁸⁷ Industrial schools were abolished in the UK by 1933.⁸⁸ In the UK, inquiries in the 1940s emphasised the lack of coordination and monitoring between the numerous bodies which shared responsibility for the welfare of children in the care of the state,⁸⁹ but also a failure to respond to allegations of abuse and cruelty. Scotland was distinctive for its use of day industrial schools or 'ragged schools', which aimed at reforming children who had not already committed crimes.⁹⁰ By the early twentieth century, the forty-eight reformatories and industrial schools in Scotland were dealing with nearly 7,000 girls and boys.⁹¹ After the creation of Northern Ireland in 1922 with the partition of Ireland, there were only five industrial or reformatory schools still operational.⁹²

Industrial schools were established in Ireland under the Industrial Schools Act 1868.⁹³ Over the recorded period from 1936 to 1970, a total of 37,000 children and young persons entered Irish industrial schools.⁹⁴ The majority were operated by religious orders of the Catholic Church, with the state paying a stipend to the orders per child housed. A 1970 report recommended the closure of the residential school system, concluding that its rules and

⁸⁴ Jane Barnes, *Irish Industrial Schools, 1868–1908: Origins and Development* (Irish Academic Press 1989) 85–6.

⁸⁵ 'The Commission to Inquire into Child Abuse Report' (n 77) para 2.18.

⁸⁶ Corby, Doig and Roberts (n 75) 25.

⁸⁷ Peter Higginbotham, *Children's Homes: A History of Institutional Care for Britain's Young* (2017).

⁸⁸ Sinead Pembroke, 'The Role of Industrial Schools and Control over Child Welfare in Ireland in the Twentieth Century' (2013) 21 *Irish Journal of Sociology* 52–3.

⁸⁹ Care of Children Committee, 'Report of the Care of Children Committee (Chairman: Myra Curtis),' (His Majesty's Stationery Office 1946); Committee on Homeless Children, Etc, 'Report of the Committee on Homeless Children, Etc. (Chairman, James L. Clyde) Cmd 6911 Edinburgh,' (His Majesty's Stationery Office 1946).

⁹⁰ Mahood (n 83) 3.

⁹¹ *ibid.*

⁹² Edward Fahy, 'Reformatory Schools in Ireland' (1942) 60 *Hermathena* 54.

⁹³ Hansard (UK Parliament) Vol 285 Cc1022–4 (1884).

⁹⁴ Eoin O'Sullivan, 'The Ryan Report: Reformatory and Industrial Schools and Twentieth-Century Ireland' in Rosie Meade and Fiona Dukelow (eds), *Defining Events: Power, Resistance and Identity in Twenty-First-Century Ireland* (Manchester University Press 2014) 202.

regulations did not conform to modern standards of childcare.⁹⁵ In Ireland, industrial and reformatory schools ensured ‘the Irish Catholic’s ability to morally herd the Irish people, while the state sought to protect itself from social unrest at poverty and the derision of foreigners, especially the formerly colonial power Britain’.⁹⁶ Buckley and McGregor note that the industrial and reformatory schools reflect the high degree of trust between the Irish state and Catholic Church. In 1939, the state removed the policy of inspecting children in industrial schools placed from statutory care ‘on the basis that the job the religious were doing on behalf of the State was such that it did not require such supervision and inspection’.⁹⁷

During the 1860s–1870s, Australia introduced industrial and reformatory schools⁹⁸ but met resistance, due to the perceived stigma of poverty.⁹⁹ Instead, local legislatures had to make alternative provision for the poor and especially for children.¹⁰⁰ The early shift from boarding schools to a ‘boarding out’ model of housing children with foster families differentiates Australia from other jurisdictions¹⁰¹ but also resulted in significant abuse for Australian children in care. It is estimated that at least 500,000 children experienced life in this out-of-home ‘care’ system.¹⁰²

In Canada, residential schools were first established by religious organisations as part of their missionary work to both ‘civilize’ and ‘Christianize’ Indigenous children.¹⁰³ From 1874 until 1969, residential schools were operated in Canada jointly by Christian organisations and government.¹⁰⁴ Roughly 150,000 children were taken from their families and placed in residential

⁹⁵ ‘Reformatory and Industrial Schools System Report’ (The Stationary Office 1970).

⁹⁶ Anthony Keating, ‘Church, State, and Sexual Crime against Children in Ireland after 1922’ (2004–6) 5 *Radharc* 155, 156.

⁹⁷ Sarah-Anne Buckley and Caroline McGregor, ‘Interrogating Institutionalisation and Child Welfare: The Irish Case, 1939–1991’ (2019) 22 *European Journal of Social Work* 1062, 1069.

⁹⁸ Shurlee Swain, ‘Beyond Child Migration: Inquiries, Apologies and the Implications for the Writing of a Transnational Child Welfare History’ (2016) 13 *History Australia* 139, 140.

⁹⁹ Brian Dickey, ‘Why Were There No Poor Laws in Australia?’ (1992) 4 *Journal of Policy History* 111; Tanya Evans, *Fractured Families: Life on the Margins in Colonial New South Wales* (UNSW Press 2015).

¹⁰⁰ Swain (n 98) 141.

¹⁰¹ *ibid* 143; Shurlee Swain, ‘Institutional Abuse: A Long History’ (2018) 42 *Journal of Australian Studies* 153, 156.

¹⁰² *Forgotten Australians: A Report on Australians Who Experienced Institutional or Out-of-Home Care as Children* (Commonwealth of Australia 2004) xv.

¹⁰³ Truth and Reconciliation Commission of Canada, ‘Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada’ (2015) 50, 103; Canada, House of Commons Debates (22 May 1883), 1376.

¹⁰⁴ Truth and Reconciliation Commission of Canada (n 103) 55–6.

schools.¹⁰⁵ The residential school system operated with few regulations under the Indian Act from 1894, which were weakly enforced.¹⁰⁶ Canadian residential schools represented a colonial attempt to assimilate self-governing peoples and their national identity, by transforming their bodies, ways, and knowledge with those of the settler majority.¹⁰⁷ The Canadian government took direct control over all the schools in 1970 and began their closure.¹⁰⁸

In the United States, residential schools emerged in the seventeenth century, separating Native children from their communities to receive ‘Christian civilising instruction’.¹⁰⁹ Residential schools became formal federal policy in 1869, forcing more than 100,000 Native children to attend schools operated by Christian denominations and religious orders. The stated rationale of this policy, as in Canada, was to ‘kill the Indian, save the man’.¹¹⁰ The schools were intended to train Native boys for manual labour and girls for domestic work, reinforcing white patriarchal structures and resulting in a loss of female leadership in Native communities.¹¹¹ Across these jurisdictions, the desire to transform the character of children in residential schools was predicated on a belief in their inferior nature, as Ferguson describes their status as ‘moral dirt’.¹¹² This form of othering is also evident in institutions designed to condemn and reform women.

2.3.2 Magdalene Laundries

A second closed institution operated by religious orders were Magdalene Laundries, the first was established in 1758 in England.¹¹³ The claimed

¹⁰⁵ Matt James, ‘A Carnival of Truth? Knowledge, Ignorance and the Canadian Truth and Reconciliation Commission’ (2012) 6 *International Journal of Transitional Justice* 182, 184.

¹⁰⁶ Truth and Reconciliation Commission of Canada (n 103) 61.

¹⁰⁷ Celia Haig-Brown, *Resistance and Renewal: Surviving the Indian Residential School* (Tillacum Library 1988); Margaret D Jacobs, *White Mother to a Dark Race: Settler Colonialism, Maternalism, and the Removal of Indigenous Children in the American West and Australia, 1880–1940* (University of Nebraska Press 2009).

¹⁰⁸ Truth and Reconciliation Commission of Canada (n 103) 69.

¹⁰⁹ Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Duke University Press 2015) 35.

¹¹⁰ *ibid* 36.

¹¹¹ *ibid* 37.

¹¹² Harry Ferguson, ‘Abused and Looked After Children as “Moral Dirt”: Child Abuse and Institutional Care in Historical Perspective’ (2007) 36 *Journal of Social Policy* 123.

¹¹³ ‘Report of the Inter-Departmental Committee to Establish the Facts of State Involvement with the Magdalen Laundries, Chapter 3: History of the Magdalene Laundries and Institutions within the Scope of the Report’ (Department of Justice, Equality and Law Reform 2013) para 69.

purposes of the Laundries were to house 'fallen women' and oblige them to engage in unpaid labour as penance and in repayment for sanctuary.¹¹⁴ According to contemporary accounts, in England by 1898 'there were more than 300 Magdalene institutions, collectively housing 6,000 inmates and employing at least 1,200 full time Rescue staff'.¹¹⁵ Comprehensive historical figures are not yet gathered for Laundries in England. In Northern Ireland, Laundries operated from 1867 until 1984, housing approximately 3,000 inmates.¹¹⁶ For Linda Mahood, in Scotland, the 'carceral regimes deployed by these Magdalene asylums were based on both class and gender ideology', targeting young working-class women.¹¹⁷

The Magdalen Laundries operated in Ireland between 1795 and 1996. Ten thousand and twelve women are known to have been detained in a Magdalen Laundries from 1922 until 1996, though victim-survivor groups contest these figures.¹¹⁸ James Smith asserts, 'In a society where even the faintest whiff of scandal threatened the respectability of the normative Irish family, the Magdalen asylum existed as a place to contain and punish the threatening embodiment of instability'.¹¹⁹ In Australia, James Franklin notes the operation of eight Magdalene Laundries between 1890 and the 1960s for 'fallen women' who were placed in the convent, 'voluntarily or involuntarily, for reasons such as being destitute, uncontrollable, picked up by the police, and similar'.¹²⁰ In the United States, Magdalene Laundries were established in the 1840s, with approximately thirty-five institutions established by 1900.¹²¹ Magdalene Laundries also operated in Canada from 1820, where women were obliged to engage in unpaid labour,¹²² but have not been significantly investigated.

¹¹⁴ Michelle Jones and Lori Record, 'Magdalene Laundries: The First Prisons for Women in the United States' (2014) 17 *Journal of Indiana Academy of Social Sciences* 166, 170.

¹¹⁵ Frances Finnegan, *Do Penance or Perish: Magdalen Asylums in Ireland* (1st Oxford University Press edn, Oxford University Press 2004) 7.

¹¹⁶ Leanne McCormick and Sean O'Connell, 'Mother and Baby Homes and Magdalene Laundries in Northern Ireland, 1922–1990' (Ulster University/Queens University Belfast 2021) 33 <www.health-ni.gov.uk/sites/default/files/publications/health/doh-mbhl-final-report.pdf>.

¹¹⁷ Mahood (n 83) 8.

¹¹⁸ Maeve O'Rourke and James Smith, 'Ireland's Magdalene Laundries: Confronting a History Not yet in the Past' in Alan Hayes and Maire Meagher (eds), *A Century of Progress? Irish Women Reflect* (Arlen House 2016).

¹¹⁹ James M Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester University Press 2008) xiv.

¹²⁰ James Franklin, 'Convent Slave Laundries? Magdalen Asylums in Australia' (2013) 34 *Journal of the Australian Catholic Historical Society* 70, 71.

¹²¹ Jones and Record (n 114) 172–4.

¹²² Valerie J Andrews, *White Unwed Mother: The Adoption Mandate in Postwar Canada* (Demeter Press 2018); Jones and Record (n 114).

2.3.3 *Maternity Homes*

From the beginning of the Poor Laws, unmarried mothers and their children were considered to be a serious problem for both the management and finances of workhouses and similar institutions.¹²³ In response, specialist institutions for unmarried mothers developed in the nineteenth and early twentieth centuries from voluntary, mainly religious, organisations.¹²⁴ In 1871, Female Mission to the Fallen opened the first mother and baby home in the United Kingdom.¹²⁵ Contemporary accounts of these homes and adoption societies were critical in that they were profit making, while claiming to be philanthropic.¹²⁶ It is not until 1939 and high rates of births outside marriage during World War II that national lists of mother and baby homes were compiled. A 1949 directory contained 159 homes in England and Wales.¹²⁷ In Northern Ireland, it is estimated that between 1922 and 1990 over 10,500 women entered mother and baby homes, with an undocumented number of single mothers entering workhouses.¹²⁸

In the United States, maternity homes stigmatised pregnant young women by removing them from their families, friends, and neighbours but predominantly affected middle-class white American women and girls, who were framed as psychologically neurotic for becoming pregnant outside marriage.¹²⁹ By 1972 there were 201 maternity homes in the United States, responding to a 177 per cent increase in recorded pregnancy outside marriage from 1940.¹³⁰ Rickie Solinger suggests there was greater acceptance of an unmarried mother in African American communities but also that maternity homes often had a white-only entrance policy.¹³¹

In Canada, from the 1880s maternity homes ‘accepted money for the upkeep of an unwed mother’s infant and promised to find adoptive homes

¹²³ Maria Luddy, ‘Unmarried Mothers in Ireland, 1880–1973’ (2011) 20 *Women’s History Review* 109, 110–11.

¹²⁴ Gillian Clark, ‘The Role of Mother and Baby Homes in the Adoption of Children Born Outside Marriage in Twentieth-Century England and Wales’ (2008) 11 *Family & Community History* 45, 54.

¹²⁵ Renate Howe and Shurlee Swain, ‘Saving the Child and Punishing the Mother: Single Mothers and the State 1912–1942’ (1993) 17 *Journal of Australian Studies* 31, 34–5.

¹²⁶ Clark (n 124) 48.

¹²⁷ *ibid* 54.

¹²⁸ McCormick and O’Connell (n 116) 22.

¹²⁹ Rickie Solinger, *Wake Up Little Susie* (2nd Routledge pbk. edn, Routledge 2000) 4.

¹³⁰ Helen Wallace and others, ‘The Maternity Home: Present Services and Future Roles’ (1974) 64 *American Journal of Public Health* 568.

¹³¹ Solinger (n 129) 5–6.

for such children.¹³² Advocacy organisations have documented that at least sixty-six maternity homes operated.¹³³ Murray notes the operators of such homes perceived themselves as building the Canadian nation by ensuring that future male leaders ‘would not be “ruined” by fallen sisters “dragging” them “down to the damnable abyss”’.¹³⁴ In addition, religious orders also sought to maintain the homogeneity of their own faiths.¹³⁵ Approximately 300,000 unmarried mothers in Canada were systematically separated from their babies at birth for adoption.¹³⁶ In the 1960s, the ‘sixties scoop’ meant that Aboriginal children were ‘apprehended in disproportionate numbers throughout Canada and adopted primarily into non-Aboriginal homes in Canada, the United States, and overseas’.¹³⁷ This process of disproportionate adoption reflects the closing of the residential schools in Canada but the continuance of attempts to shape Aboriginal child welfare.¹³⁸

In Ireland, in the early 1920s, the state and religious orders established several mother and baby homes to address a perceived moral crisis involving unmarried mothers, who were framed as both sinners and damaging to the reputation of the newly independent state.¹³⁹ According to the 2021 Commission of Investigation into Mother and Baby Homes report, there were about 56,000 unmarried mothers and about 57,000 children in the mother and baby homes and county homes investigated by the Commission.¹⁴⁰ A total of about 9,000 (15 per cent of all) children died in the institutions under investigation. In Australia, diverse institutions for child welfare operated, including orphanages, asylums, and maternity homes, which have been documented as abusive by women formerly resident there.¹⁴¹ A significant practice of ‘boarding out’ children to foster homes also persisted in Australia.¹⁴² Swain and Howe argue: ‘The objective of protecting the child while punishing the mother became the

¹³² Karen Bridget Murray, ‘Governing Unwed Mothers in Toronto at the Turn of the Twentieth Century’ (2004) 85 *The Canadian Historical Review* 253, 256.

¹³³ <www.originscanada.org/adoption-practices/adoption-realities/homes-for-unwed-mothers/>

¹³⁴ Murray (n 132) 258.

¹³⁵ *ibid* 261.

¹³⁶ Andrews (n 122).

¹³⁷ Raven Sinclair, ‘Identity Lost and Found: Lessons from the Sixties Scoop’ (2007) 3 *First Peoples Child and Family Review* 65, 66.

¹³⁸ *ibid* 67.

¹³⁹ Finola Kennedy, *Cottage to Crèche: Family Change in Ireland* (Institute of Public Administration 2001) 145; Luddy (n 123) 110.

¹⁴⁰ Commission of Investigation into Mother and Baby Homes, *Final Report, Executive Summary* (Official Publications 2021) 2.

¹⁴¹ *Commonwealth Contribution to Former Forced Adoption Policies and Practices* (Commonwealth of Australia 2012) 34–9.

¹⁴² *Forgotten Australians* (n 102) 20–30.

central concern of public policy in relation to single mothers',¹⁴³ which led to a significant practice of forced adoptions, discussed below.

2.4 HISTORIES OF ABUSES

In addition to entire classes and nations of peoples, women and children were particularly marginalised by social attitudes and institutionalisation through intersectional forms of harm and discrimination, affecting especially poor, black, mixed race, or Indigenous women and children. In a context of prior inter-generational harms, such as colonisation and slavery, institutionalisation not only occurred with the support of governments, churches, and families, socialised by contemporary religious attitudes and teaching, but also formed part of criminal justice, health, and welfare systems. When combined with persistent criminal behaviour by religious actors outside of institutional contexts, especially clerical child sexual abuse, a picture of widespread and systemic harms against members of these societies from state and church officials emerges. Harm, especially sexual violence, is always under-reported and difficult to estimate. This is doubly true regarding historical abuses, where the passage of time and degradation of evidence make it difficult now to reach accurate estimates about the number of victims-survivors and perpetrators involved.¹⁴⁴ The harms listed below should be understood as provisional and likely under-reported.

2.4.1 *Genocide*

In international law, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group; and
- (e) Forcibly transferring children of the group to another group.¹⁴⁵

¹⁴³ Howe and Swain (n 125) 31.

¹⁴⁴ David Finkelhor and Richard K Ormrod, 'Factors in the Underreporting of Crimes Against Juveniles' (2001) 6 *Child Maltreatment* 219.

¹⁴⁵ Convention on the Prevention and Punishment of the Crime of Genocide (entered into force 12 January 1951) 78 UNTS 277, entered into force Jan. 12, 1951.

The label genocide remains highly controversial in its application to the United States, Canada, and Australia,¹⁴⁶ due in part to the retroactive application of this legal concept and the effect of alleging genocide in challenging national myths and identities.¹⁴⁷ Russell Thornton estimates the total Indigenous American population to be 5 million before 1492, falling to 250,000 towards the end of the nineteenth century,¹⁴⁸ though the nature and extent of genocidal killings, with the intention and not merely the consequence of destroying specific groups, remain highly contentious.¹⁴⁹ David Stannard suggests 'disease and genocide were interdependent forces, acting dynamically'.¹⁵⁰ Some examples exist of clear genocidal intent. In the nineteenth century, the discovery of gold in California led to a significant inward migration of settlers that devastated the Indigenous population, which at that time was estimated to have numbered approximately 150,000. Fewer than thirty years later, that population was reduced to fewer than 30,000.¹⁵¹ A California state fund was created to pay per head or scalp of each Native American person exterminated.¹⁵²

In addition to the military conquest of land, settler colonialism across the United States, Canada, and Australia demonstrates several practices that could be deemed genocidal in nature, or, at a minimum, have genocidal consequences, such as sexual violence. In addition, several forms of assimilation and the construction of citizenship and equality legislation can be seen to have destructive effects on the sovereign nature and identity of First Nations and Native peoples. In the United States, the Indian Citizenship Act 1924 declared all Indian peoples 'born within the territorial limits of the United States' to be US citizens and not primarily members of their tribal nation.

In Australia, two practices against Aboriginal peoples have been suggested as genocidal: killings in the process of land seizure and dispossession, and the twentieth-century policies of institutionalisation and child removal that 'developed

¹⁴⁶ Katherine Ellinghaus, 'Biological Absorption and Genocide: A Comparison of Indigenous Assimilation Policies in the United States and Australia' (2009) 4 *Genocide Studies and Prevention* 59, 59–60.

¹⁴⁷ Jeff Benvenuto, Andrew Woolford and Alexander Laban Hinton, 'Colonial Genocide in Indigenous North America' in Andrew Woolford, Alexander Laban Hinton and Jeff Benvenuto (eds), *Colonial Genocide in Indigenous North America* (Duke University Press 2014) 4.

¹⁴⁸ Russell Thornton, *American Indian Holocaust and Survival: A Population History Since 1492* (University of Oklahoma Press 1990) 30.

¹⁴⁹ David E. Stannard, *American Holocaust: The Conquest of the New World* (Oxford University Press 1993).

¹⁵⁰ *ibid.* xii.

¹⁵¹ Benjamin Madley, *An American Genocide: The United States and the California Indian Catastrophe, 1846–1873* (Yale University Press 2016) 3.

¹⁵² *ibid.* 145–172.

as settler governments attempted to control surviving Indigenous populations'.¹⁵³ Colin Tatz maintains that the violent extermination of First Peoples in Australia reduced a population of at least 250,000 at first contact in 1788 to 30,000 by 1911.¹⁵⁴ The Australian *Bringing Them Home* report concluded that child removal from Indigenous families constituted genocide; that mixed motives did not abrogate the required intention for genocide; and that removal policies continued well after 1946 when genocide became a crime under international law. One in ten, possibly as many as one in three, Indigenous children were removed from their families and communities between 1910 and the 1970s.¹⁵⁵

In Canada, over 150,000 First Nations, Métis, and Inuit children were placed in residential schools, which the Canadian Truth and Reconciliation Commission (TRC) termed 'cultural genocide'.¹⁵⁶ Bonita Lawrence describes assimilationist strategies which limited the status of Indigenous peoples to those who married within their own people, 'statistical genocide', with over 25,000 women having lost status between 1876 and 1985; anywhere from 1 to 2 million of their descendants are now incapable of asserting any legally recognised Indigenous identity in Canada.¹⁵⁷ A 2019 report concluded that contemporary violence being perpetrated against First Nations, Inuit, and Métis women and girls 'amounts to a race-based genocide of Indigenous peoples'.¹⁵⁸ Accusations of genocide have been resisted in the United States, Canada, and Australia and offer a challenging alternative to positive national histories, identities, and myths.¹⁵⁹ In the face of such resistance, Larissa Behrendt insists: 'the political posturing and semantic debates do nothing to dispel the feeling Indigenous people have that this is the word that adequately describes our experience as colonized people'.¹⁶⁰

¹⁵³ Ann Curthoys, Ann Genovese and Alexander Reilly, *Rights and Redemption: History, Law and Indigenous People* (UNSW Press 2008) 114.

¹⁵⁴ Colin Tatz, 'Genocide in Australia' (1999) 1 *Journal of Genocide Research* 315.

¹⁵⁵ Meredith Wilkie (ed), *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Human Rights and Equal Opportunity Commission 1997) 30–32.

¹⁵⁶ Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The Final Report of the Truth and Reconciliation Commission of Canada, Volume 1, Part 2*: (McGill-Queen's University Press 2015) vii.

¹⁵⁷ Bonita Lawrence, *Real Indians and Others: Mixed-Blood Urban Native Peoples and Indigenous Nationhood* (University of Nebraska Press 2004) 77.

¹⁵⁸ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1a* (National Inquiry into Missing and Murdered Indigenous Women and Girls 2019) 50.

¹⁵⁹ Curthoys, Genovese and Reilly (n 153) 130.

¹⁶⁰ Larissa Behrendt, 'Genocide: The Distance between Law and Life' (2001) 25 *Aboriginal History* 132.

2.4.2 *Physical, Sexual, and Psychological Violence*

Physical and sexual violence are a central element of historical abuses considered in this book. Evidence of sexual abuse, including child sexual abuse, in Christian churches has a long history,¹⁶¹ in both institutional and non-institutional settings. Doyle, Sipe and Wall conclude: ‘sexual abuse of minors and adults by Catholic clergy has continued without interruption from the post-Apostolic period to present’.¹⁶² Child sexual abuse perpetrated by priests has occurred in Ireland, Canada, the United States, the United Kingdom, and Australia in significant numbers, both in institutional settings and in the dioceses and parishes of the Catholic Church. When perpetrated against Indigenous peoples in the context of broader assimilationist strategies, such violence can assume a genocidal character.¹⁶³

In the United States, within the Roman Catholic Church, initial reports disclosed a total of 17,259 reported cases with 4,392 priests accused of abuse between 1950 and 2002.¹⁶⁴ One estimate suggests that there may be 100,000 total victims of child sexual abuse arising in the Roman Catholic Church in the United States alone.¹⁶⁵ Andrea Smith also alleges rampant sexual abuse in Indian boarding schools,¹⁶⁶ though in the absence of nationwide inquiries it is difficult to ascertain the appropriate figure.

Sexual violence also forms part of the legacy of violence inherent in slavery and racism in the United States,¹⁶⁷ especially in a context where black women’s bodies, and any children resulting from rape and sexual assault, were deemed property.¹⁶⁸ Patricia Hill Collins notes that perversely after

¹⁶¹ Kim Stevenson, ‘Unearthing the Realities of Rape: Utilising Victorian Newspaper Reportage to Fill in the Contextual Gaps’ (2007) 28 *Liverpool Law Review* 405; Emily J Manktelow, *Gender, Power and Sexual Abuse in the Pacific; Rev. Simpson’s Improper Liberties* (Bloomsbury Publishing PLC 2018).

¹⁶² Doyle, Sipe and Wall (n 8) 53.

¹⁶³ Stannard (n 149) 121.

¹⁶⁴ John Jay College of Criminal Justice and Catholic Church (eds), *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States, 1950–2002: A Research Study Conducted by the John Jay College of Criminal Justice, the City University of New York: For the United States Conference of Catholic Bishops* (United States Conference of Catholic Bishops 2004) 4.

¹⁶⁵ John Allen, ‘Vatican Abuse Summit: \$2.2 Billion and 100,000 Victims in U.S. Alone’ *National Catholic Reporter* (8 February 2012) <<http://ncronline.org/blogs/ncr-today/vatican-abuse-summit-22-billion-and-100000-victims-us-alone>>.

¹⁶⁶ Smith (n 109) 38.

¹⁶⁷ Ruth Thompson-Miller and Leslie H Picca, ‘“There Were Rapes!”: Sexual Assaults of African American Women and Children in Jim Crow’ (2017) 23 *Violence Against Women* 934, 935.

¹⁶⁸ Thelma Jennings, ‘“Us Colored Women Had to Go Through A Plenty”: Sexual Exploitation of African-American Slave Women’ (1990) 1 *Journal of Women’s History* 45; Leon F Litwack,

emancipation when enslaved women were no longer property, they were vulnerable to even more rapes: 'No longer the property of a few White men, African American women [and girls] became sexually available to all White men'.¹⁶⁹

Sexual violence intersects with other forms of racist violence, especially lynching. Racist perceptions of the threat of sexual violence posed by black men to white women were often the basis for lynching of black men,¹⁷⁰ who were frequently sodomised or castrated as part of the lynching violence.¹⁷¹ Lynching, being premeditated extrajudicial killing, emerged as a particular form of political and racial violence in the post-Reconstruction United States.¹⁷² Lynchings were often public and mass events in which dozens or hundreds would participate,¹⁷³ often on the supposed basis of an allegation of murder or rape by the victim.¹⁷⁴ Estimates indicate at least 4,000 racially motivated lynchings between 1877 and 1950.¹⁷⁵ Sherrilyn Ifill notes the economic dimensions of lynching amid agriculture on large plantations 'lynching helped ensure the maintenance of a compliant and available workforce, without which the traditional agrarian southern economy could not function for the benefit of whites'.¹⁷⁶ James Cone sees the legacy of lynching as a key element of understanding the structural violence of racism in Christian terms: 'every time a white mob lynched a black person, they lynched Jesus. The lynching tree is the cross in America'.¹⁷⁷

In Canada, at least 37,951 claims have been received for injuries resulting from physical and sexual abuse at residential schools,¹⁷⁸ likely only a portion of the full harms experienced. Although the Canadian Truth and Reconciliation

Been in the Storm So Long: The Aftermath of Slavery (1st Vintage Books edn, Vintage Books 1980).

¹⁶⁹ Patricia Hill Collins, *Black Sexual Politics: African Americans, Gender, and the New Racism* (Routledge 2006) 65.

¹⁷⁰ Thompson-Miller and Picca (n 167) 937.

¹⁷¹ Philip Dray, *At the Hands of Persons Unknown: The Lynching of Black America* (Modern Library pbk edn, Modern Library 2003).

¹⁷² Manfred Berg, *Popular Justice: A History of Lynching in America* (Rowman & Littlefield Publishers, Incorporated 2015).

¹⁷³ Barbara Holden-Smith, 'Lynching, Federalism, and the Intersection of Race and Gender in the Progressive Era' (1996) 8 *Yale Journal of Law & Feminism* 31, 36; Sherrilyn A Ifill, *On the Courthouse Lawn: Confronting the Legacy of Lynching in the Twenty-First Century* (Beacon Press 2007) 16.

¹⁷⁴ Holden-Smith (n 173) 39.

¹⁷⁵ 'Lynching in America' (Equal Justice Initiative 2017) <<https://lynchinginamerica.eji.org/report/>>.

¹⁷⁶ Ifill (n 173) 65.

¹⁷⁷ James H Cone, *The Cross and the Lynching Tree* (Orbis Books 2011) 158.

¹⁷⁸ *Truth and Reconciliation Commission of Canada* (n 156) 106–7.

noted the widespread nature of sexual abuse in residential schools against Aboriginal children,¹⁷⁹ in the absence of a nationwide inquiry into clerical abuse it is impossible to estimate the scale of sexual violence both in and out of institutions. Physical abuse and sexual abuse often were intertwined.¹⁸⁰ In 2019, the Canadian Conference of Catholic Bishops (CCCCB) was unable to provide comprehensive figures of the number of priests credibly accused of child sex abuse since 1950, noting that its conference did not gather nationwide statistics.¹⁸¹

In Australia, sexual violence has long been a pervasive form of harm, both in and beyond institutional contexts.¹⁸² However, as in other jurisdictions, prosecutions for child abuse in the context of institutions remained challenging. A 2017 report heard from almost 8,000 survivors of abuse alleging abuse in over 3,400 institutions,¹⁸³ with over 1,800 alleged perpetrators in religious settings in claims of child sexual abuse,¹⁸⁴ and 7,382 survivors alleging abuse in religious settings.¹⁸⁵

In Ireland, commissions of inquiry revealed that sexual abuse was ‘endemic’ in religious institutions throughout the country, with more than 1,000 former pupils testifying with allegations of physical and sexual abuse.¹⁸⁶ Between 1975 and 2014, there were 4,406 allegations of child sexual abuse by priests reported to church authorities and Gardai.¹⁸⁷ In the United Kingdom, at the

¹⁷⁹ Truth and Reconciliation Commission of Canada (n 45) 559–70.

¹⁸⁰ *Truth and Reconciliation Commission of Canada* (n 156) 108.

¹⁸¹ Tavia Grant, ‘The Walking Wounded: In Canada, Survivors of Catholic Church Sex Abuse Await a Reckoning’ *The Globe and Mail* (22 September 2019) <www.theglobeandmail.com/canada/article-the-walking-wounded-in-canada-survivors-of-catholic-church-sex-abuse/>.

¹⁸² Alana Piper (ed), *Gender Violence in Australia: Historical Perspectives* (Monash University Publishing 2019).

¹⁸³ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (Royal Commission into Institutional Responses to Child Sexual Abuse 2017).

¹⁸⁴ ‘Proportion of Priests and Non-ordained Religious Subject to a Claim of Child Sexual Abuse 1950–2010’ (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) 5.

¹⁸⁵ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (Royal Commission into Institutional Responses 2017) Vol. 16, 13.

¹⁸⁶ ‘Report by Commission of Investigation into the Handling by Church and State Authorities of Allegations and Suspicions of Child Abuse against Clerics of the Catholic Archdiocese of Dublin’ (Department of Justice, Equality and Law Reform 2009); Carol Holohane, ‘In Plain Sight: Responding to the Ferns, Ryan, Murphy and Cloyne Reports’ (Amnesty International 2011).

¹⁸⁷ Figures compiled from annual reports available from the National Board for Safeguarding Children in the Catholic Church in Ireland, ‘Publications,’ 20 April 2020, <www.safeguarding.ie/publications>.

time of writing, the nature and extent of historical child abuse in England and Wales, and in Scotland, remain subject to ongoing inquiries. In Northern Ireland, the Historical Institutional Abuse Inquiry (HIAI) found systemic failings in the majority of residential institutions for children it investigated, with evidence of sexual, physical, and emotional abuse; neglect; and unacceptable practices across the institutions and homes examined.¹⁸⁸ Across these jurisdictions, it has also been shown that religious superiors knew about allegations of sexual abuse and made efforts to cover up the abuse or transfer abusers to avoid scandal.¹⁸⁹ While child sexual abuse crises have gathered significant national and international attention, it is important to position such abuse in the context of broader systems of violence and oppression of those deemed ‘other’, both in and beyond institutional contexts.

2.4.3 *Theft of Land and Property*

The conquest and occupation of Indigenous land is key to the structure of settler colonialism as an ongoing event, affecting the territories known as the United States, Canada, and Australia today. Settling forces removed Native peoples from lands they sought to occupy, through treaties, violence, and economic coercion. Western attitudes to sovereignty and early international law ignored the sovereignty and laws of Indigenous peoples and First Nations,¹⁹⁰ to expropriate and take land without effective consent. Walter Hixson notes that ‘Euro-Americans employed the law as a means of disavowing the colonizing act. In some cases Indians legitimately sold land. Other times speculators and officials cheated them out of land, sometimes in collusion with their own “chiefs” or other tribes’.¹⁹¹

From the 1600s on, the territories of Indigenous tribes in North America were invaded by the English, Spanish, and French and, later, by the Americans. Kent McNeil notes that the loss of the lands of First Nations peoples was gradual and that it was not until 1870 to 1890 that ‘the asserted

¹⁸⁸ AR Hart and others, *Report of the Historical Institutional Abuse Inquiry* (2017) Chapter 1, paras. 68–81.

¹⁸⁹ Truth and Reconciliation Commission of Canada (n 45) 559–70; Timothy Willem Jones, ‘Sin, Silence and States of Denial: Canon Law and the “Discovery” of Child Sexual Abuse’ (2015) 41 *Australian Feminist Law Journal* 237; Linda Hogan, ‘Clerical and Religious Child Abuse: Ireland and Beyond’ (2011) 72 *Theological Studies* 170.

¹⁹⁰ Kent McNeil, ‘Factual and Legal Sovereignty in North America: Indigenous Realities and Euro-American Pretensions,’ in Julie Evans and others (eds), *Sovereignty: Frontiers of Possibility* (University of Hawai‘i Press 2013) 49.

¹⁹¹ Walter L Hixson, *American Settler Colonialism: A History* (1st ed, Palgrave Macmillan 2013) 45.

territorial sovereignty of these states became a reality on the ground'.¹⁹² In the United States, the Indigenous Reservation system began in 1763 with the Royal Proclamation set by Great Britain.¹⁹³ Between 1778 and 1871, the US Senate ratified 370 Indian treaties.¹⁹⁴ The 1830 Indian Removal Act systematised a federal policy forcibly moving Native peoples away from settler-populated areas.¹⁹⁵ Glenn notes: 'Through treaty, these tribes were prevailed upon to cede their traditional lands in Mississippi, Alabama, Georgia, and Florida in exchange for land west of the Mississippi'.¹⁹⁶ This led to the forced migration of five tribes from traditional lands in the Southern United States to Oklahoma, in what is known as 'the Trail of Tears',¹⁹⁷ leading to a forced march of the Cherokee peoples to the West and the death of at least 4,000 Cherokees from hunger, cold, and disease.¹⁹⁸

In 1851, Congress passed the Indian Appropriations Act creating Indian reservations in Oklahoma.¹⁹⁹ The 1871 Indian Appropriation Act removed constitutional recognition of tribes as sovereign nations. In the 1880s, federal Indian policy adopted the goal of assimilation or 'Americanisation' to be achieved through education of Indian children in residential schools, as discussed above, and through land allotment, intended to break up tribal governments, abolish the reservations, and assimilate Indians into non-Indian society as farmers.²⁰⁰ Charles Geisler suggests that 'Indians in America lost their land through coercion muted by market-like negotiations on some occasions and coercion without pretense on others'.²⁰¹ Glenn notes that 'before the start of allotment, Indians owned 138 million acres; that amount was reduced to 54 million acres by 1934 when the allotment program was terminated'.²⁰² The theft of land also affected African Americans, who

¹⁹² McNeil (n 190) 39.

¹⁹³ Colin G Calloway, *The Scratch of a Pen: 1763 and the Transformation of North America* (Oxford University Press 2007).

¹⁹⁴ *ibid* 93.

¹⁹⁵ Alfred Cave, 'Abuse of Power: Andrew Jackson and the Indian Removal Act 1830' (2003) 65 *The Historian* 1330.

¹⁹⁶ Glenn (n 31) 56.

¹⁹⁷ Dee Brown, *Bury My Heart at Wounded Knee: An Indian History of the American West* (Vintage 2006); John Ehle, *Trail of Tears: The Rise and Fall of the Cherokee Nation* (1st edn, Doubleday 1988).

¹⁹⁸ Glenn (n 31) 56.

¹⁹⁹ Joan Waugh, *U.S. Grant: American Hero, American Myth* (University of North Carolina Press 2009) 60–159.

²⁰⁰ Glenn (n 31) 56–7.

²⁰¹ Charles Geisler, 'Disowned by the Ownership Society: How Native Americans Lost Their Land: Native American Enclosure' (2014) 79 *Rural Sociology* 56, 58–9.

²⁰² Glenn (n 31) 56–7.

were excluded from the Homestead acts.²⁰³ A 2001 investigation into the theft of black-owned land stretching back to the pre-Civil War period documented some 406 victims and 24,000 acres of land valued at tens of millions of dollars. The land was taken through various means from legal pressure to violence.²⁰⁴ Richard Rothstein has recently argued that racial segregation of land and housing has persisted throughout America through active policies of government at local, state, and federal levels.²⁰⁵

In Canada, jurisdiction over ‘Indians and Lands reserved for the Indians’ was assigned to the Parliament of Canada through the Constitution Act 1867. Canada promised Britain to honour the provisions of the 1763 Proclamation to ‘negotiate with its Amerindians for the extinguishment of their title and the setting aside of reserves for their exclusive use’. This promise led to several numbered treaties.²⁰⁶ Subsequent government practice under the 1876 Indian Act asserted further control over Indigenous people and their sovereignty. The Canadian TRC concluded that the Government of Canada’s failure to honour the original intent of treaty relationships, as well as the ‘destructive impacts of residential schools, [and] the 1876 *Indian Act*’, have resulted in the broken trust among Indigenous people and Canadians.²⁰⁷

In Australia, in 1788, the First Nations possessed the entire continent. Then during a prolonged period of land grab from 1788 to the late 1960s Indigenous peoples were dispossessed.²⁰⁸ Aileen Moreton-Robinson argues that settler states viewed dispossession as inherently legal based on the idea of *terra nullius*: ‘Indigenous people did not have a concept of ownership, which means that we had no sovereignty to defend. Thus there was no theft, no war, and no need to have a treaty’.²⁰⁹ The dispossession of land is central to the harms experienced and reproduced against Indigenous peoples in settler colonies. As we will see in subsequent chapters, although states are willing

²⁰³ Samuel Bowles and Herbert Gintis, ‘The Inheritance of Inequality’ (2002) 16 *Journal of Economic Perspectives* 3.

²⁰⁴ Todd Lewan and Dolores Barclay, ‘When They Steal Your Land, They Steal Your Future’ *The Los Angeles Times* (Los Angeles, California, 2 December 2001).

²⁰⁵ Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (W W Norton & Company 2017).

²⁰⁶ Derek Whitehouse, ‘The Numbered Treaties: Similar Means to Dichotomous Ends’ (1994) 3 *Past Imperfect* 25.

²⁰⁷ Truth and Reconciliation Commission of Canada (n 103) 184.

²⁰⁸ Robert Nichols, ‘Theft Is Property! The Recursive Logic of Dispossession’ (2018) 46 *Political Theory* 3.

²⁰⁹ Aileen Moreton-Robinson, *The White Possessive: Property, Power, and Indigenous Sovereignty* (University of Minnesota Press 2015) 150.

to acknowledge and seek to remedy other more discrete harms, the return of lands to Indigenous peoples remains deeply challenging.

2.4.4 *Slavery and Unpaid Labour*

Slavery and subsequent practices of discrimination and mass incarceration of African Americans in the United States are discussed above. In Australia, unpaid labour was central to the establishment of Indigenous camps on land occupied by European conquest.²¹⁰ Domestic labour was promoted as a means by which to civilise and assimilate Indigenous girls into lower social classes.²¹¹ State and church officials framed the exploitation of the labour of children to build religious buildings as training and education.²¹² Unpaid labour was also a feature of life in workhouses in Ireland and the United Kingdom,²¹³ and latterly in industrial schools.²¹⁴ Unpaid labour was framed as penance for moral wrongdoing in Magdalene Laundries and maternity homes.²¹⁵ In Canada, in residential schools, parents and inspectors raised concerns about just how much work Indigenous students were being required to do.²¹⁶ The exploitation of labour across diverse national contexts demonstrates the links between historical abuses and the modern-day distribution of wealth and economic structures.

2.4.5 *Forced Child Removal*

Adoption and child migration were used to create a new family by seeking the destruction of another, an exchange that increased the number of ‘respectable’ citizens while cleansing the country of others. In the nineteenth century, child migration began to be seen in the United Kingdom as a means of reducing the financial demands of the poor, meeting ‘labour needs of

²¹⁰ Anthony Thalia, ‘Reconciliation and Conciliation: The Irreconcilable Dilemma of the 1965 “Equal” Wage Case for Aboriginal Station Workers’ [2007] *Labour History* 15.

²¹¹ Ros Kidd, *Trustees on Trial: Recovering the Stolen Wages* (Aboriginal Studies Press 2006).

²¹² *Lost Innocents: Righting the Record: Report on Child Migration* (Senate Community Affairs References Committee Secretariat 2001).

²¹³ Simon Fowler, *The Workhouse: The People, the Places, the Life Behind Doors* (Grantham Book Services Ltd 2008) 111.

²¹⁴ ‘The Commission to Inquire into Child Abuse Report’ (n 77) Appendix, Review of Financial Matters relating to the system of the Reformatory and Industrial Schools, and a number of individual institutions 1939–69 (30 November 2007).

²¹⁵ Lindsey Earner-Byrne, *Mother and Child: Maternity and Child Welfare in Dublin, 1922–60* (Manchester University Press 2013) 189.

²¹⁶ Truth and Reconciliation Commission of Canada (n 45) 340.

underpopulated colonies', and benefitting child migrants themselves.²¹⁷ Gordon Lynch suggests that churches and charities cultivated a sense that child migration was a moral necessity to keep children within their own religious tradition.²¹⁸

Several policies were enacted in the United States, Canada, and Australia to remove children of the poor and Indigenous children from their families and communities, to ensure they became "'civilized" and Christianised'.²¹⁹ In the United States, urban growth and immigration placed children in poor families at significant risk of hunger, disease, and poor housing in a context of a need to populate the American West and further assimilate migrants.²²⁰ 'Orphan trains' organised placement of upwards of 200,000 urban poor children from the east of the United States within religious communities in the Western United States.²²¹ Starting in the 1880s, Indian child removal combined with placement in boarding schools to limit the influence of Indian mothers and to assimilate the child,²²² with as many as 25–35 per cent of all Indian children forcibly removed, mostly from extended family networks, and placed in predominately non-Indian homes, which had no relation to American Indian cultures.²²³ Between 1900 and the 1970s, one-third of all Indigenous children born had been adopted into non-Indigenous families.²²⁴ Rickie Solinger notes that it is especially post-World War II that US policymakers began to enact specific policies to separate mother and child where a mother was deemed morally problematic for being poor, pregnant, and unmarried.²²⁵ Across the United States, it is estimated that a million and a half babies were adopted between 1945 and 1973.²²⁶

²¹⁷ Gordon Lynch, *Remembering Child Migration: Faith, Nation-Building, and the Wounds of Charity* (Bloomsbury Academic 2016) 11.

²¹⁸ *ibid* 14–15, 103.

²¹⁹ Gordon Lynch, 'Saving the Child for the Sake of the Nation: Moral Framing and the Civic, Moral and Religious Redemption of Children' (2014) 2 *American Journal of Cultural Sociology* 165, 167.

²²⁰ Lynch (n 217) 14–15.

²²¹ Lynch (n 219) 166.

²²² Glenn (n 31) 57.

²²³ Troy Johnson, 'The State and the American Indian: Who Gets the Indian Child?' (1999) 14 *Wicazo SA Review* 197, 204.

²²⁴ Marian Bussey and Nancy M Lucero, 'Re-Examining Child Welfare's Response to ICWA: Collaborating with Community-Based Agencies to Reduce Disparities for American Indian/Alaska Native Children' (2013) 35 *Children and Youth Services Review* 394, 395.

²²⁵ Rickie Solinger, 'Poor and Pregnant in the United States: 1950s, 1970s, 1990s' (1994) 21 *Social Justice* 22.

²²⁶ Ann Fessler, *The Girls Who Went Away: The Hidden History of Women Who Surrendered Children for Adoption in the Decades before Roe v. Wade* (Penguin Press 2007) 31.

In Australia, the first child removal legislation introduced in the 1840s related to Indigenous children.²²⁷ Missionaries believed that by direct instruction of Aboriginal children, the children would ‘appreciate not only the benefits of civilisation, but the higher advantages of Christianity’.²²⁸ Swain notes the progressive strengthening of the child removal powers can be understood within the context of growing concern about the racial composition of the nation.²²⁹ The Aborigines Protection Act 1909 enabled the removal of children without their parents’ consent if they were found by a magistrate to be ‘neglected’, which included children having ‘no visible means of support or fixed place of abode’.²³⁰ Adoption was a radical process enabling the erasure of a child’s identity.²³¹ In this context, children were placed in church-affiliated institutions, where they were removed from and often had no further contact with their identity, families, and culture.²³² As noted above, the forced removal from Indigenous families, the Stolen Generations, affected between one in ten and one in three Indigenous children. Child migration of foreign white children became an explicit policy of the Australian government as part of its White Australia policy.²³³ The 1922 Empire Settlement Act in the United Kingdom funded this child migration scheme. However, after their arrival in Australia, no authority monitored the children.²³⁴ UK child migration schemes continued until 1970.²³⁵ 6,500–7,000 unaccompanied child migrants were sent from the UK to Australia alone between 1912 and 1970.²³⁶

In Canada, approximately 90,000 unaccompanied children were transported from the United Kingdom from 1869 until the early twentieth century.²³⁷ Lynch notes that throughout the nineteenth century ‘the

²²⁷ Shurlee Swain, ‘Enshrined in Law: Legislative Justifications for the Removal of Indigenous and Non-Indigenous Children in Colonial and Post-Colonial Australia’ (2016) 47 *Australian Historical Studies* 191, 196.

²²⁸ *ibid* 197.

²²⁹ *ibid* 206.

²³⁰ Peter Read and New South Wales and Department of Aboriginal Affairs, *The Stolen Generations: The Removal of Aboriginal Children in New South Wales 1883–1969* (New South Wales Department of Aboriginal Affairs 2008) 7.

²³¹ Swain, ‘Enshrined in Law’ (n 227) 206.

²³² Russell MF Hawkins and Freda Briggs, ‘The Institutionalised Abuse of Children in Australia: Past and Present’ (1997) 133 *Early Child Development and Care* 41, 42.

²³³ Ellen Boucher, *Empire’s Children: Child Emigration, Welfare, and the Decline of the British World 1869–1967* (Cambridge University Press 2014) 92–125.

²³⁴ Hawkins and Briggs (n 232) 43.

²³⁵ Lynch (n 217) 2.

²³⁶ *ibid* 52.

²³⁷ *ibid* 31.

organisational structures through which child migration from Britain to Canada operated were diffuse, made up of competing and complementary relationships between state welfare providers, philanthropists, civic leaders, donors and churches'.²³⁸ In addition, domestic adoptions in Canada were significant in the twentieth century. Some 600,000 Canadian babies were labelled 'illegitimate' between 1945 and 1971, and it is estimated that between 300,000 and 450,000 babies were given up for forced adoption during this period.²³⁹

In the United Kingdom, it is estimated that at least 500,000 women were affected by forced adoption practices in the twentieth century²⁴⁰ but only recently did this become subject to official investigation.²⁴¹ Adoption was unregulated in Ireland, until the Adoption Act 1952. Natural mothers have strongly disputed the voluntary nature of the consent given to these arrangements even after 1952.²⁴² Mike Milotte argues that successive Irish governments were aware of a substantial, lucrative but entirely illegal trade in Irish children through illegal adoption and that both church and state supported the process in part as a mechanism to avoid the adoption of children into Protestant homes and to retain the Catholic faith of adopted children,²⁴³ with allegations of up to 15,000 illegal adoptions nationally.²⁴⁴ For many children, migration or adoption constituted a painful loss of relationships with family friends and community, compounded by neglect in new homes and institutions.²⁴⁵ For some children, these forms of harm were compounded by experiences of physical and sexual violence and exploitation of their labour, as discussed above.

²³⁸ *ibid* 41.

²³⁹ Andrews (n 122) 152; 'The Shame Is Ours: Forced Adoptions of the Babies of Unmarried Mothers in Post-War Canada' (Standing Senate Committee on Social Affairs, Science and Technology 2018).

²⁴⁰ Harriet Sherwood, 'MPs Urge Theresa May to Apologise for "Pain" of Forced Adoption Policy' *The Guardian* (London, 12 July 2018).

²⁴¹ Duncan Kennedy, 'Forced Adoption: Birth Parents Urged to Give Evidence to Inquiry' *BBC News* (London, 23 September 2021) <www.bbc.com/news/uk-58667268> accessed 1 December 2021.

²⁴² 'Clann Report: Principal Submissions to the Commission of Investigation into Mother and Baby Homes' (2018) <http://clannproject.org/wp-content/uploads/Clann-Submissions_Redacted-Public-Version-October-2018.pdf>.

²⁴³ Mike Milotte, *Banished Babies: The Secret History of Ireland's Baby Export Business* (New Island Books 2012) 23–25.

²⁴⁴ Vivienne Clarke, 'There May Be 15,000 Illegal Adoptions, Barnardos Head Claims' *The Irish Times* (Dublin, 30 May 2018).

²⁴⁵ Lynch (n 217) 88–90.

2.5 CONCLUSION

Amid other social, political, and economic forces, Christianity and churches were intimately involved in the social cultural and political development of Western Europe and the Global North but also in the justification of violence, conflict, and marginalisation of those deemed 'other', inferior, or morally problematic: non-Christians, non-whites, the poor, with a particular emphasis on women and children. Christianity framed and amplified historical abuses and their justifications to existential, eternal dimensions. It is in this context of inter-generational and widespread forms of violence that we can place closed institutions that operated until within living memory. The continuation of ideas that gave rise to historical abuses and the material aftermath of these harms continue to shape and inform the countries and churches examined in this book. If these cycles are not broken, justice for historical abuses will not be attained, and these countries and churches may reproduce fresh instances of exclusion, othering and violence, even as they attempt to do justice to the past.