

## The Magdalen Commission and the Value of Voice

Aoife Fennelly

Irish criminal justice is founded on a corrective approach focusing on the punishment of individual identified wrongdoers, with the victim's voice confined to witness to the infringement of a specific law. However, the established criminal justice system was effectively closed as a means of redress to those subjected to unlawful imprisonment and unpaid forced labour<sup>1</sup> in the Magdalen Laundries supported by the Irish State<sup>2</sup>, due to the complex cultural and systemic factors that underpinned their incarceration<sup>3</sup>. Such obstacles highlight the difficulties of accessing criminal justice when the wrongdoing is perpetrated on a large scale by a State-endorsed system. In these circumstances, perhaps justice is better served through allowing victims a central role and voice in the resolution process. This paper will draw on psychotherapeutic theory and research to consider the value of the restorative justice process provided for these women through the Magdalen Commission<sup>4</sup>. By situating the Commission's process within the wider literature on truth commissions it will demonstrate some problems with adopting such alternative approaches and so address the question of whether this route actually constitutes an equivalent access to justice.

Increasingly, the needs of victims of crime are recognised as relevant in ensuring that justice is done, as demonstrated by the introduction of the Victim Impact Statement<sup>5</sup> and the recognition of victims' rights in the EU Victims Directive<sup>6</sup>. This broadening of focus accommodates a restorative justice perspective, which is non-adversarial, collaborative and based on addressing the underlying interests of the individuals harmed.<sup>7</sup> Above all, it facilitates victims in expressing the impact of the offence on them to the perpetrator, thereby allowing them a voice in a process that, in the past, has confined their participation to their evidential utility in prosecuting an alleged

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<sup>1</sup> Assessment of the Human Rights Issues arising in relation to the Magdalen laundries (Irish Human Rights Commission, 2010)

<sup>2</sup> From 1922 to 1996.

<sup>3</sup> See Maeve O'Rourke, Ireland's Magdalen laundries and the state's duty to protect, 2011, *Hibernian Law Journal*, 10, 200.

<sup>4</sup> Magdalen Commission Report (2013, Department of Justice and Equality), p. 2.

<sup>5</sup> Criminal Justice Act, 1993, s. 5.

<sup>6</sup> EU Directive 2012/29/EU

<sup>7</sup> Poulson (2003). Third Voice: A Review of Empirical Research on the Psychological Outcomes of Restorative Justice, A. *Utah Law Review*, 167.

wrongdoer. This aspect was particularly important for the Magdalen women, many of whom were never informed of the basis on which they were incarcerated,<sup>8</sup> and who for years were stigmatised and silenced within their communities.<sup>9</sup>

The notion that speaking about trauma benefits the victims of criminal acts has been incorporated into certain investigation processes where the causation-based assessment of individual blame based on adversarial sworn testimony typical of traditional legal systems has been deemed inappropriate to bring the matter to resolution, primarily where the harm has been inflicted on a large scale by a government in power. In this context, over twenty-five ‘truth commissions’ have been established since Argentina’s National Commission on the Disappearance of Persons in 1983.<sup>10</sup> Much has been claimed regarding the benefits of such processes for individual participants<sup>11</sup> but the psychological literature may provide a firmer basis for drawing any conclusions.

The psychotherapeutic benefits of speaking about trauma have been recognised since Sigmund Freud proposed psychoanalysis as a ‘talking cure’<sup>12</sup> and they continue to be confirmed today<sup>13</sup>. Self-silencing is often implemented as a strategy for self-protection but can easily develop into a debilitating psychological resistance, emerging in traumatic symptoms.<sup>14</sup> This strategy and its consequences were commonplace among the Magdalen women and most had assiduously concealed their prior history in the Laundries.<sup>15</sup> Psychotherapeutic interventions, therefore, focus on

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<sup>8</sup> Report of the Inter Departmental Committee to establish the facts of state involvement with the Magdalen Laundries, (Department of Justice and Equality, 2013), p. 931.

<sup>9</sup> Smith (2008) *Ireland’s Magdalen Laundries and the Nation’s Architecture of Containment*, (2008, Manchester University Press, p. xviii.

<sup>10</sup> Wiebelhaus-Brahm. *Truth commissions and transitional societies: The impact on human rights and democracy*. (2010, Routledge).

<sup>11</sup> Allan and Allan, ‘The South African Truth and Reconciliation Commission as a Therapeutic Tool,’ *Behavioral Sciences and Law* 18(4) (2000): 462–463.

<sup>12</sup> Freud. *Studies in Hysteria*. (1895, MacMillan).

<sup>13</sup> Pearlman (2001). Treatment of persons with complex PTSD and other trauma-related disruptions of the self. *Treating psychological trauma and PTSD*, 205-236.

<sup>14</sup> Rogers et al. (1994). Interpreting loss in ego development in girls: Regression or resistance. *Exploring identity and gender: The narrative study of lives*, 2, 1-36.

<sup>15</sup> Smith. *Ireland’s Magdalen Laundries and the Nation’s Architecture of Containment*, (2008, Manchester University Press) p. xviii.

articulating trauma. ‘Logotherapy’, founded on Viktor Frankl’s Holocaust experience, holds that individuals need to speak about traumatic events to find existential meaning in them.<sup>16</sup> Bruner’s self-making narrative model uses narrative structure to generate alternative possibilities for understanding one’s position in relation to one’s own life and sociocultural context.<sup>17</sup> Language is regarded as a means of both organising and constituting experience through the collaborative cultural enterprise involved in speaking to another individual. The Magdalen Commission presented an opportunity to those damaged by traumatic events to assign them a position in their personal narratives by reconstruing them verbally to an individual representing the State authorities.

These therapeutic modes emphasise the efficacy of speaking to ease psychological distress and there is considerable empirical evidence to support this approach within a therapeutic relationship. Exposure therapy, which entails recounting the details of a traumatic incident and hence exposure to the associated emotions, was found to alleviate Post Traumatic Stress Disorder (PTSD) symptoms in victims of sexual assault.<sup>18</sup> Testimony psychotherapy, involving a more holistic narrative of an individual’s history, significantly reduced PTSD symptom severity and recurrence in a sample of post-genocide Bosnian refugees.<sup>19</sup> Narrative exposure therapy, combining both approaches, was found significantly more effective than supportive counseling and psychoeducation in reducing PTSD symptoms among Sudanese refugee settlement residents.<sup>20</sup> However, can these positive findings apply to the processes of commissions of investigation?

The Magdalen Commission, chaired by Mr. Justice Quirke, was established by the Irish Government to devise a compensation scheme on the basis of the findings of the

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<sup>16</sup> Frankl. *Man's Search for Meaning*. (1985, Simon and Schuster).

<sup>17</sup> Bruner (2004). Life as narrative. *Social Research*, 691-710.

<sup>18</sup> Foa et al. (1999). A comparison of exposure therapy, stress inoculation training, and their combination for reducing posttraumatic stress disorder in female assault victims. *Journal of Consulting and Clinical Psychology*, 67, 194–200.

<sup>19</sup> Weine et al. (1998). Testimony psychotherapy in Bosnian refugees: A pilot study. *American Journal of Psychiatry*, 155(12), 1720-1726.

<sup>20</sup> Neuner et al. (2004). A comparison of narrative exposure therapy, supportive counseling, and psychoeducation for treating PTSD in an African refugee settlement. *Journal of consulting and clinical psychology*, 72(4), 579.

McAleese Report of direct State involvement in the Magdalen Laundries.<sup>21</sup> Its Terms of Reference mandated that it contribute to a “healing and reconciliation process” on a non-adversarial basis.<sup>22</sup> The Quirke Report emphasises the aim of giving “significant control over the conduct and outcome of the process” and “a coherent voice and degree of self-determination” to a group who reported feeling long “forgotten, denied and disbelieved”.<sup>23</sup> Consequently, the Commission adopted a restorative justice approach and invited former Laundry residents to express their current needs through a system of structured telephone interviews with trained volunteers and, where desired, face-to-face private dialogues with Mr. Justice Quirke.

The method adopted allowed the women to speak freely about both the subjective impact of the Magdalen laundry experience on them and about their current circumstances. Where the adversarial process restricts the narrative of testimony to the prescribed account that fits the strategy of an argument, the accounts given by the women related to any aspect of their experience that they felt was relevant and important to communicate to the judge. On the face of it, the aspirations of this process reflect psychotherapeutic aims. Furthermore, several women who had participated in more formal investigation processes, such as the Residential Institutions Redress Board<sup>24</sup>, reported feeling believed and respected in the Commission’s dialogue procedure but disbelieved and retraumatised by the experience testifying in other fora.<sup>25</sup> However, such opinions were espoused contemporaneously with the process and it may be more enlightening to examine the evidence of other commissions to understand the potential impacts on individual participants.

Adopting similarly psychotherapeutic language, East Timor’s Truth and Reconciliation Commission (TRC) conducted a series of “healing workshops” to

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<sup>21</sup> Report of the Inter Departmental Committee to establish the facts of state involvement with the Magdalen Laundries, (Department of Justice and Equality, 2013).

<sup>22</sup> Magdalen Commission Report, p. 1.

<sup>23</sup> *Ibid*, p.21.

<sup>24</sup> Residential Institutions Redress Board Act 2002.

<sup>25</sup> Personal communication with Magdalen Commission participant, April 2013.

facilitate conflict survivors to share their stories.<sup>26</sup> Yet, while Commission personnel claimed participants were positively affected by the process, mental health workers observed a subsequent exacerbation of PTSD symptoms.<sup>27</sup> Individuals may be temporarily protected by adrenaline while testifying, thus appearing psychologically intact, but symptoms can be triggered by the process and emerge later.<sup>28</sup> Trauma exposure may be beneficial within a systematic therapeutic process in which symptoms can be monitored and contained by trained mental health professionals; however, the nature of such a process contrasts sharply with the formal, quasi-legal and frequently public trauma exposure exercise facilitated by truth commissions, in addition to the absence of professional trauma treatment training among their personnel.

Although initially conceived as fact-finding, the notion of “healing” survivors was introduced as a central aim of truth commissions by Archbishop Tutu, Chairperson of South Africa’s TRC.<sup>29</sup> Within this discourse, healing, reconciliation and public truth-telling have been commonly assumed to be intrinsically and linearly linked.<sup>30</sup> More recently though, as slowly the first steps of investigating the psychological impacts of participation in such processes for survivors have been taken, evidence has emerged that casts doubt on such a simple view of individual psychological healing. One study reported that three quarters of interviewees felt that the TRC had betrayed them in failing to meet promises of assistance and compensation.<sup>31</sup> Notably, these participants found the process of recounting their stories of trauma helpful but ultimately felt neither heard nor taken seriously by the authorities in view of the subsequent lack of pragmatic assistance. A desire for retributive justice and recognition of legitimate anger at the injustices perpetrated also emerged, as most participants wanted the perpetrators to serve time in jail, which was excluded by the amnesty offered by the

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<sup>26</sup> Chegal The CAVR Report (2005, CAVR).

<sup>27</sup> Silove et al. (2006). Do truth commissions heal? The East Timor experience. *The Lancet*, 367(9518), 1222-1224.

<sup>28</sup> Hamber et al. (2000). Telling it like it is: survivors' perceptions of the TRC. *Psychology in Society*, 26, 18-42.

<sup>29</sup> Truth and Reconciliation Commission Final Report, (2003, Cape Town).  
<http://www.sahistory.org.za/archive/trc-final-report-volume-6-foreword>.

<sup>30</sup> Allan (n 11).

<sup>31</sup> Hamber (n 26).

TRC to those who volunteered an account of their crimes and, in any case, was counter to the discourse of healing and forgiveness that permeated the process.

One problem with the literature extolling the therapeutic advantages of truth-telling has been its focus on the views of commission administrators as opposed to participants in the process. For example, one study asserting that truth commissions meet the “instinctive needs of survivors to tell their stories” relies only on reports of NGO workers and commission personnel.<sup>32</sup> Another citing the psychosocial benefits of the South African TRC primarily interviewed conflict resolution professionals as opposed to those allegedly experiencing these benefits.<sup>33</sup> While the South African TRC Report<sup>34</sup> claimed that the statement-giving process had been therapeutic for participants, one quantitative study found no difference in alleviation of psychological distress symptoms between political detainees who had given statements to the TRC and those who had not and suggests that the process may have been too short and unstructured for psychological gains.<sup>35</sup>

Unlike the commissions discussed, the Magdalen Commission relied on private confidential dialogue rather than public testimony. This protected the participants both from stigmatisation and from their narratives being exploited by other State or media interests.<sup>36</sup> However, the process also demonstrated some of the defects highlighted: it made assumptions about the ease of healing and reconciliation; the process was very short<sup>37</sup>; it was delivered by individuals untrained in mental health; and it lacked the structure of a therapeutic relationship to manage the consequences of speaking about trauma.

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<sup>32</sup> Allan (n 11).

<sup>33</sup> De la Rey & Owens (1998). Perceptions of psychosocial healing and the TRC in South Africa. *Peace and Conflict: Journal of Peace Psychology*, 4(3), 257.

<sup>34</sup> TRC (n 27).

<sup>35</sup> Kagee (2006). The relationship between statement giving at the South African TRC and psychological distress among former political detainees. *South African Journal of Psychology*, 36(1), 10-24.

<sup>36</sup> As occurred in South Africa. See Ross (2003) Some after-effects of testifying before the South African TRC. *Anthropological Research*, 3(3), 325-341.

<sup>37</sup> Three months.

Regardless of the therapeutic benefits participants may have derived from the listening process at the time, the most important acknowledgement of having been heard is manifested in an individual's expectations of the process being met. A key problem with the Magdalen Commission was revealed not in its actual operation but in the government's subsequent renegeing on its commitment to fully implement the recommendations produced as a direct result of the listening process.<sup>38</sup> The health card granted provided a considerably reduced range of services than that recommended.<sup>39</sup> Despite acknowledgement of the need for prompt redress<sup>40</sup> given the advanced years of many applicants, the legislation supporting the healthcare package only came into force in July 2015, more than two years after the Report's publication.<sup>41</sup> The principle that justice delayed is justice denied was particularly pertinent for those who died in the interim and those in very poor health.<sup>42</sup> Furthermore, the evidence of length of stay given by some women was rejected in determining levels of compensation.<sup>43</sup> This inevitably undermined any initial psychological benefits derived from feeling heard or believed in the dialogue process as it meant that their own narratives were once again silenced and usurped by others.

For the women participating, the Magdalen Commission process provided a form of justice they could not otherwise have accessed in two ways. Firstly, it aimed to repair harm by allowing them articulate their concerns freely, which can have psychotherapeutic benefits where there is a genuine listening exercise supported procedurally by delivery of reasonable expectations at its culmination. Secondly, it

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<sup>38</sup> Patsy McGarry, 'Outrage expressed at provisions of Magdalen Bill', *Irish Times*, 19 January 2015. <http://www.irishtimes.com/news/social-affairs/outrage-expressed-at-provisions-of-magdalene-bill-1.2071614>.

<sup>39</sup> Justice For Magdalens Research Press Release, 14<sup>th</sup> July 2015. <http://www.magdalenelaundries.com/press/JFMR%20PR%20140715.pdf>

<sup>40</sup> State apology of Taoiseach Enda Kenny to the Magdalen women 19 February 2013. <http://static.rasset.ie/documents/news/kenny-magdelene-speech.pdf>

<sup>41</sup> Redress for Women Resident in Certain Institutions Act 2015.

<sup>42</sup> Maeve O'Rourke and James Smith, 'Magdalen survivors are still waiting for restorative justice', 6 February 2014 <http://www.irishtimes.com/news/politics/magdalene-survivors-are-still-waiting-for-restorative-justice-1.1680691>.

<sup>43</sup> Sorcha Pollack, 'Magdalen survivor: They're ignoring my basic human rights' 19 January 2015. <http://www.irishtimes.com/news/social-affairs/magdalene-survivor-they-re-ignoring-my-basic-human-rights-1.2071627>; Parliamentary question Maureen O'Sullivan TD to Frances Fitzgerald TD <http://www.parliamentary-questions.com/question/35439-14/>.

allowed them communicate these to a representative of the authorities responsible for that harm. However, if being given a voice is equated with being given control in the process and its outcome, then that voice is only properly enabled where it is supported by a sense of procedural fairness. Only then can the psychotherapeutic rewards of speaking about traumatic experiences to an appropriate listener be truly reaped.