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Emotions and Dealing with the Past

5.1 INTRODUCTION

Emotions are a central but under-appreciated element of historical-structural injustices and the potential and limits of modern-day responses such as transitional justice. Dealing with the past gives us the opportunity to address not only what we think but also what we feel about past violence. In this context, emotions function as a mechanism by which states and churches allow victim-survivors to exercise agency within the structure of legal and political institutions and within particular national emotional climates. Within these structures, emotions operate to provide the symbolic and public means by which the states and churches themselves seek to respond in kind in addressing their legacies of gross violations of human rights. In doing so, transitional justice can affirm or rework national and religious myths as sites of practical knowledge and felt experiences. An effective use of emotions in myths can challenge purely triumphalist conceptions of the nation or religion and replace them with more mature accounts that recognise the fallibility of state and churches. In doing so public emotions can articulate our shared responsibility for addressing the way in which our contemporary societies are structured by the reproduction of historical-structural injustices. This chapter will briefly frame existing debates in a growing literature on emotion and affect before identifying the relationship between emotions and transitional justice, historical-structural injustice, and power. The chapter will then argue that public emotions, including the emotional content of statements by political and religious leaders, are a key means by which these institutions construct responses to historical abuses. A final section problematises the role of shame as a public emotion and suggests the need for alternatives.

5.2 CONCEPTUALISING EMOTIONS AND AFFECT

Emotions have been historically neglected in the social sciences and overly contrasted with the study of rationality.¹ Such a distinction is not apolitical² but instead maps onto structures of patriarchy, whereby maleness was historically equated with rationality and women, femininity, and emotions were deemed irrational.³ In addition, Susan Leigh Foster argues that early thinking on emotions must be situated ‘within the context of Britain’s discovery of the new world and subsequent colonial expansion’.⁴ She criticises the work of Adam Smith and David Hume on sympathy and empathy, as depending on pernicious distinctions of nation and race, as well as those of gender and class.⁵ Today, scholarship recognises that emotions are not additional to reason and rationality but that emotions are essential to rational thought.⁶

Within recent emotions literature, there is a distinction between emotions and affect. A variety of approaches have been taken to defining these terms across disciplines in the humanities and sciences, principally psychology.⁷ For Paul Hoggett and Simon Thompson, for instance, ‘Affect concerns the more embodied, unformed and less conscious dimension of human feeling, whereas emotion concerns the feelings which are more conscious since they are more anchored in language and meaning’.⁸ Anne-Marie D’Aoust cautions that we need to be wary of drawing too sharp a distinction between emotions and affect, claiming that a focus on this distinction may have the unintended

¹ Jeff Goodwin, James Jasper and Francesca Polletta, ‘Why Emotions Matter: Introduction to Passion Politics’ in Jeff Goodwin, James Jasper and Francesca Polletta (eds), *Passionate Politics: Emotions and Social Movements* (University of Chicago Press 2001).

² Thomas Dixon, *From Passions to Emotions: The Creation of a Secular Psychological Category* (Cambridge University Press 2003).

³ Simon J Williams and Gillian Bendelow, *The Lived Body: Sociological Themes, Embodied Issues* (Routledge 1998) 131.

⁴ Susan Leigh Foster, *Choreographing Empathy: Kinesthesia in Performance* (Routledge 2011) 11.

⁵ *ibid* 138, 142.

⁶ Antonio R Damasio, *Descartes’ Error: Emotion, Reason and the Human Brain* (Vintage 2006); Antonio R Damasio, *The Feeling of What Happens: Body, Emotion and the Making of Consciousness* (Vintage 2000).

⁷ Monica Greco and Paul Stenner, ‘Happiness and the Art of Life: Diagnosing the Psychopolitics of Wellbeing’ (2013) 5 *Health, Culture and Society* 1, 11; Kristyn Gorton, ‘Theorizing Emotion and Affect: Feminist Engagements’ (2007) 8 *Feminist Theory* 333; James A Russell, ‘Emotion, Core Affect, and Psychological Construction’ (2009) 23 *Cognition & Emotion* 1259.

⁸ Paul Hoggett and Simon Thompson (eds), *Politics and the Emotions: The Affective Turn in Contemporary Political Studies* (Continuum 2012) 2.

consequence of dividing examination of expression of emotions to social sciences, while leaving study of the body to neurosciences.⁹

A second point of contention is whether emotions and affect are universal in nature or whether they are socially conditioned and constructed. Literature within the critical and feminist traditions suggests that emotions are shaped by geo-political forces, such as power.¹⁰ Monique Scheer emphasises that emotions are not universal traits of personality but rather depend upon culturally specific socialisation.¹¹ Goodwin et al concur that emotions are all politically, historically, and culturally constructed, with the emotions most relevant to politics more likely to be constructed, such as rage, shame, or indignation regarding identity and rights, and are all ‘culturally and historically variable’.¹²

A third area of disagreement in the literature is whether and how emotions can be meaningfully ascribed to groups, such as institutions, states, and churches, as well as across members of social groups along racial, gender, or religious lines.¹³ For instance, Brandon Hamber and Richard Wilson argue that nations are not like individuals, lack collective psyches, and that individual and collective processes of healing work on different timelines.¹⁴ John Protevi distinguishes between ‘emergentist and individualist perspectives on the subject. The emergentists posit a collective subject underlying collective emotions, while the individualists claim that collective emotions are simply the alignment or coordination of individual emotions’.¹⁵

Finally, there is growing recognition of the inherent relationship between law and emotion.¹⁶ Terry Maroney notes that recent scholarship recognises ‘law as a flexible, context-driven mechanism for reflecting, managing,

⁹ Anne-Marie D’Aoust, ‘Ties That Bind? Engaging Emotions, Governmentality and Neoliberalism: Introduction to the Special Issue’ (2014) 28 *Global Society* 267, 269–70.

¹⁰ Carolyn Pedwell, *Affective Relations: The Transnational Politics of Empathy* (Palgrave Macmillan 2014) 14; Arlie Russell Hochschild, *The Managed Heart: Commercialization of Human Feeling* (20th Anniversary ed, University of California Press 2003).

¹¹ Monique Scheer, ‘Are Emotions a Kind of Practice (and Is That What Makes Them Have a History?)’ (2012) 51 *History and Theory* 193.

¹² Goodwin, Jasper and Polletta (n 1) 13.

¹³ Christian von Scheve and Mikko Salmella (eds), *Collective Emotions: Perspectives from Psychology, Philosophy, and Sociology* (1st ed, Oxford University Press 2014).

¹⁴ Brandon Hamber and Richard A Wilson, ‘Symbolic Closure through Memory, Reparation and Revenge in Post-Conflict Societies’ (2002) 1 *Journal of Human Rights* 35.

¹⁵ John Protevi, ‘Political Emotion’ in Christian von Scheve and Mikko Salmella (eds), *Collective Emotions* (Oxford University Press 2014) 326.

¹⁶ Susan A Bandes (ed), *The Passions of Law* (New York University Press 1999); Julia JA Shaw, *Law and the Passions: Why Emotion Matters for Justice* (Routledge 2020); Brian H Bornstein and Richard L Wiener (eds), *Collective Emotions: Perspectives from Psychology, Philosophy, and Sociology* (1st edn, Oxford University Press 2014).

nurturing, or (dis)incentivizing specific emotions in specific situations for specific purposes'.¹⁷ Scholarship in this area recognises a bi-directional relationship – that law and emotion may each shape and effect one another.¹⁸ However, Bandes et al suggest that it remains the case that the structure of legal systems views emotions negatively, signalling prejudice, irrelevance or lack of reason and functions 'as a way to exclude evidence, discredit witnesses, and otherwise impose legal consequences', particularly in cases of individuals with traditionally marginalised status – women, people of colour, and individuals lacking social, economic, educational, or political capital.¹⁹

In the context of these ongoing debates, this chapter will examine the extent to which emotions are involved in transitional justice, power, and examine the social and public use of emotions in responding to historical abuses. The public use of emotion will examine the social construction of emotions, and subsequent chapters will consider both the emotional lived experiences of victim-survivors of transitional justice mechanisms and the explicit and political use of emotions by those mechanisms and the states and churches they concern.

5.3 EMOTIONS AND POWER

Understanding emotions and affect is a necessary but neglected part of addressing the role of power in historical-structural abuses. Luna Dolezal notes that 'Foucault offers little insight into how a subject feels and experiences power structures'.²⁰ Jonathan Heaney suggests that emotions and power are 'conceptual twins, both of which are essential to any understanding of social and political life'.²¹ Heaney suggests limited consideration of emotion is particularly pronounced regarding theories of power, concluding 'emotion operated as an "epistemological other" and like other "others", was to be controlled, ignored or banished'.²² He suggests instead that affect and power

¹⁷ Terry A Maroney, 'A Field Evolves: Introduction to the Special Section on Law and Emotion' (2016) 8 *Emotion Review* 3, 4.

¹⁸ Kathryn Abrams and Hila Keren, 'Who's Afraid of Law and the Emotions?' (2010) 94 *Minnesota Law Review* 1997, 2037.

¹⁹ Susan A Bandes, Jody Lyneé Madeira, Kathryn D Temple and Emily Kidd White, 'Introduction', in Susan Bandes and others, *Research Handbook on Law and Emotion* (Edward Elgar Publishing 2021) 4.

²⁰ Luna Dolezal, *The Body and Shame: Phenomenology, Feminism, and the Socially Shaped Body* (Lexington Books 2015) 63.

²¹ Jonathan G Heaney, 'Emotions and Power: Reconciling Conceptual Twins' (2011) 4 *Journal of Political Power* 259, 259.

²² *ibid* 264.

are intimately linked: 'Affect is the effect of relations of power'.²³ Lauren Guilmette argues, 'Networks of power sort, define, modify, and normalize the affective responses of their subjects through disciplinary institutions; yet affect also exceeds this range, opening space for resistance when one feels ill at ease with relational and/or institutional arrangements'.²⁴ D'Aoust concurs: 'Because bodies are always situated, sexualised and racialised, they do not feel the same way – to ourselves, but also to others ... emotions cannot be uncoupled from relations of power that characterise and permeate the social field.'²⁵ As a result, a key challenge in considering the relationship between emotions and power is recognition of how power may shape the feeling rules across diverse intersectional forms of identity.²⁶

This potential role of emotions can be assessed across the four faces/dimensions of power: agency, structure, epistemic, and ontological, each considered in detail below. Emotions will be experienced in the individual interactions in the agency dimension of power, between individual victim-survivor and perpetrator, or later between a survivor and the state or church seeking to address the past, in particular through transitional justice mechanisms examined in the next section. Second, emotions will be engaged by the experience of structural biases and structural injustices in the second dimension of power, whereby existing structural biases or injustices may minimise, exclude, or discriminate against women, children, Indigenous peoples, African Americans, or victim-survivors more broadly.

Third, epistemic injustice and the experience of not being heard or listened to can both silence the emotions as lived experience of survivors and prompt emotional responses, including trauma responses. Maroney is concerned about how law treats emotions in this dimension: 'Emotion-relevant legal questions often fall into an epistemological blank space. This is an unacceptable state of affairs. It is unacceptable, first, because it destabilizes law: when the bases upon which law is made are idiosyncratic, so too is the law itself. This state of affairs also is unacceptable because, in many instances, stable

²³ *ibid* 270.

²⁴ Lauren Guilmette, 'In What We Tend to Feel Is Without History: Foucault, Affect, and the Ethics of Curiosity' (2014) 28 *The Journal of Speculative Philosophy* 284, 286.

²⁵ D'Aoust (n 9) 271.

²⁶ Charlène Calderaro and Éléonore Lépinard, 'Intersectionality as a New Feeling Rule for Young Feminists: Race and Feminist Relations in France and Switzerland' (2021) 28 *European Journal of Women's Studies* 387; Kaitlin T McCormick and others, 'New Perspectives on Gender and Emotion' in Tomi-Ann Roberts and others (eds), *Feminist Perspectives on Building a Better Psychological Science of Gender* (Springer International Publishing 2016).

bases for emotional assessment exist. Finally, where no such bases exist, emotional assessment should be openly acknowledged as an expression of one's beliefs and values, not passed off as simple truth'.²⁷ Finally, emotions have an ontological dimension in their relationship to power where the expression of particular emotions may be state based, with a particular emphasis at the end of this chapter on the risks associated with public expressions of shame. For Ben Anderson, 'attending to the dynamics of affective life may become political when brought into contact with forms of biopower that, in different ways, normalise life'.²⁸

5.3.1 *Emotions, Agency, and Transitional Justice*

Emotions play a significant role in the commission of human rights violations in a variety of ways, shaping not only individual acts of violence but also the very structures and ideologies of gross human rights violations.²⁹ First, historical abuses can be explained in part as having emotional dimensions to their causes. Existing literature on the concept and sociology of emotions argues that shame is the master emotion and is at the root of all acts of violence – in particular, the shame of being ashamed may lead to acts of rage, anger, and violence to deny this experience of shame.³⁰ When fear drives people to blame others who are not actually responsible, we can call it scapegoating.³¹

Second, historical abuses, such as genocide, crimes against humanity, physical and sexual violence, and the damage to families and culture all foreseeably generate a range of intense emotional responses.³² Rage, grief, loss, shame, and disgust are among the predictable and documented responses to these events among victim-survivors, their families, and wider communities

²⁷ Terry A Maroney, 'Lay Conceptions of Emotion in Law' in Susan Bandes and others, *Research Handbook on Law and Emotion* (Edward Elgar Publishing 2021) 16.

²⁸ Ben Anderson, 'Affect and Biopower: Towards a Politics of Life' (2012) 37 *Transactions of the Institute of British Geographers* 28, 29.

²⁹ Thomas Brudholm and Johannes Lang (eds), *Emotions and Mass Atrocity: Philosophical and Theoretical Explorations* (1st ed, Cambridge University Press 2018) 3.

³⁰ James Gilligan, *Violence: Reflections on a National Epidemic* (Vintage Books 1997) 10–11; L Ray, 'Shame, Rage and Racist Violence' (2004) 44 *British Journal of Criminology* 350; Thomas J Scheff and Suzanne M Retzinger, *Emotions and Violence: Shame and Rage in Destructive Conflicts* (iUniverse 2001); Thomas J Scheff, *Bloody Revenge: Emotions, Nationalism, and War* (Routledge 2020).

³¹ Gordon W Allport, *The Nature of Prejudice* (Unabridged, 25th Anniversary ed, Addison-Wesley Pub Co 1979).

³² Brian Martin, 'Managing Outrage over Genocide: Case Study Rwanda' (2009) 21 *Global Change, Peace & Security* 275.

who become aware of or acknowledge these events.³³ A victim-survivor-centred approach suggests a plurality of experiences and emotions should be anticipated and welcomed. Macalester Bell suggests: ‘as victims of wrongdoing . . . we should be careful to articulate to ourselves and to others precisely what attitudes and emotions we experience’.³⁴ McAlinden notes that cases of child abuse in particular often provoke significant public responses of anger, leading to the ‘othering’ of sex offenders.³⁵ She notes that where such emotional responses provide the basis for subsequent legislation or other responses to abuse, these responses may ‘tend to inflate embedded levels of societal suspicion, mistrust and intolerance concerning potential sex offenders, and create indiscriminate strategies which “cast the net of suspicion on all”’.³⁶ Historical-structural injustices are often causes or contributing factors to survivors’ experiences of trauma and post-traumatic stress disorder (PTSD), which in turn ‘is often associated with a wide range of trauma-related aversive emotions such as fear, disgust, sadness, shame, guilt, and anger’.³⁷

Third, emotions are a central feature of transitional justice measures in dealing with the past. Transitional justice can involve several emotions among victims and survivors directed at the leaders, perpetrators, and collaborators involved in the commission of harms.³⁸ Winter notes: ‘affective questions of emotion and intent are central to personal redress ethics’.³⁹ Kamari Maxine Clarke argues that international human rights and transitional justice use law in a particular manner to encapsulate emotion: ‘Law garners its authority through emotional affects that produce various forms of encapsulation, and

³³ Pumla Gobodo-Madikizela, ‘Remorse, Forgiveness, and Rehumanization: Stories from South Africa’ (2002) 42 *Journal of Humanistic Psychology* 7.

³⁴ Macalester Bell, *Hard Feelings: The Moral Psychology of Contempt* (Oxford University Press 2013) 270.

³⁵ Anne-Marie McAlinden, ‘Re-Emotionalising Regulatory Responses to Child Sex Offences’ in Heather Conway and John Stannard (eds), *The Emotional Dynamics of Law and Legal Discourse* (Hart 2016) 140.

³⁶ *ibid* 141.

³⁷ Nora Görg and others, ‘Trauma-Related Emotions and Radical Acceptance in Dialectical Behavior Therapy for Posttraumatic Stress Disorder after Childhood Sexual Abuse’ (2017) 4 *Borderline Personality Disorder and Emotion Dysregulation* 15; Ananda B Amstadter and Laura L Vernon, ‘Emotional Reactions During and After Trauma: A Comparison of ‘Trauma Types’ (2008) 16 *Journal of Aggression, Maltreatment & Trauma* 391; Lisa M Hathaway, Adriel Boals and Jonathan B Banks, ‘PTSD Symptoms and Dominant Emotional Response to a Traumatic Event: An Examination of DSM-IV Criterion A2’ (2010) 23 *Anxiety, Stress & Coping* 119.

³⁸ Brandon Hamber, *Transforming Societies after Political Violence: Truth, Reconciliation, and Mental Health* (Springer 2009) 118–22.

³⁹ Stephen Winter, *Transitional Justice in Established Democracies: A Political Theory* (Palgrave Macmillan 2014) 19.

through this process power is made real through various emotive appeals'.⁴⁰ Clarke suggests 'as feelings of political actors are projected onto sites of legal action, those actors jockey for power to establish the core assumptions that underlie beliefs about why something like violence erupts or how it should be mitigated'.⁴¹

Truth and reconciliation commissions are understood as being a central forum for the provision of testimony by victim-survivors. Such testimony can often involve intensely emotional accounts of the experiences of harm, grief, and suffering endured by victim-survivors. Since the South African Truth and Reconciliation Commission, there have been assessments of the claim that the disclosure of such experiences and testimony can have a healing and cathartic effect on survivors.⁴² Studies call this claim into question and suggest that such commissions may have therapeutic value for only some survivors and in some contexts⁴³ or worse may be re-traumatising, or the value may dissipate over time.⁴⁴ Chapter 6 will explore the existing studies on the emotional impact of public inquiries like truth commissions on victim-survivors of historical-structural abuses.

Accountability mechanisms such as criminal and civil trials shape the role of emotions. The provision of testimony regarding past violence and suffering is subjected to rules of procedure and legal examination by professionals, in a manner which can formalise the experience of survivors and alienate them from their role within a trial process.⁴⁵ This will be explored further in Chapter 7. In addition, this formalisation of emotional experiences is shared with engagement with reparations mechanisms, explored in Chapter 8. Although in transitional justice theory reparations are designed to provide acknowledgement to victim-survivors of their suffering, this approach tends to focus on the status of survivors as rights holders, as civic agents, rather than as

⁴⁰ Kamari Maxine Clarke, *Affective Justice: The International Criminal Court and the Pan-Africanist Pushback* (Duke University Press 2019) 38.

⁴¹ *ibid* 11.

⁴² David Mendeloff, 'Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice' (2009) 31 *Human Rights Quarterly* 592.

⁴³ Jonathan Doak, 'The Therapeutic Dimension of Transitional Justice: Emotional Repair and Victim Satisfaction in International Trials and Truth Commissions' (2011) 11 *International Criminal Law Review* 263.

⁴⁴ Bernard Rimé and others, 'The Impact of Gacaca Tribunals in Rwanda: Psychosocial Effects of Participation in a Truth and Reconciliation Process after a Genocide' (2011) 41 *European Journal of Social Psychology* 695.

⁴⁵ Terry A Maroney and James J Gross, 'The Ideal of the Dispassionate Judge: An Emotion Regulation Perspective' (2014) 6 *Emotion Review* 142; Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (University of Pennsylvania Press 2005).

individuals with particular lived experiences, including emotional experiences. Finally, emotions play a significant role in the processes of apology and reconciliation, examined in Chapters 9 and 10.

Across these institutional settings, the emotions involved in historical abuses and transitional justice likely intersect with experiences of trauma and PTSD.⁴⁶ Susanne Karstedt notes that ‘when listeners are confronted with such extreme trauma, atrocious events, or severe illness, they react with less empathy and even attempt to constrain the victim in the expression of emotions. Bystanders and nonvictims severely underestimate the victim’s situation, react with anxiety, and respond with simplistic interventions that cannot do justice to the complex consequences of the negative emotional experience’.⁴⁷ As a result of these complexities and the shaping of emotion by particular institutional contexts, there is no way to assume that a ‘single-shot expression of emotions’ in transitional justice processes can contribute to the diminishing of emotional trauma.⁴⁸ As a result, emotions are relevant to transitional justice in addressing the past not only at an individual level for victim-survivors, perpetrators, and legal officials but also at a society-wide level through the emotional impacts of truth commissions processes and findings, the theatre and outcome of criminal and civil trials, and the performative effect and consequences of public state and church apologies.⁴⁹ Significant empirical work with survivors’ experience in and around transitional justice mechanisms related to historical abuses is therefore warranted to validate claims that such processes offer healing, catharsis, or otherwise address emotions. Without it, at best we may conclude that at present transitional justice creates an ambivalent experience for the emotions of victim-survivors.

5.3.2 *Emotions and Historical-Structural Injustices*

In addition to this first, interactive dimension of power and emotion in transitional justice institutions, how emotions interact with these institutions

⁴⁶ Mendeloff (n 42).

⁴⁷ Susanne Karstedt, ‘Emotions and Criminal Law: New Perspectives on an Enduring Presence’ in Roger Patulny and others (eds), *Emotions in Late Modernity* (Routledge 2019) 101, 108; Bernard Rimé, ‘Emotion Elicits the Social Sharing of Emotion: Theory and Empirical Review’ (2009) 1 *Emotion Review* 60, 76.

⁴⁸ Kim ME. Lens and others, ‘Delivering a Victim Impact Statement: Emotionally Effective or Counter-Productive?’ (2015) 12 *European Journal of Criminology* 17, 30.

⁴⁹ Susanne Karstedt, ‘Between Micro and Macro Justice: Emotions in ‘Transitional Justice’ in Susan Bandes and others, *Research Handbook on Law and Emotion* (Edward Elgar Publishing 2021).

will be shaped by the second dimension of power involving structures and historical-structural injustice. As structures and practices of power seek to control bodies, they also seek to control and shape socially appropriate emotions.⁵⁰ Jon Elster writes, culture ‘acts as a modifier – whether as amplifier or as brake – of the emotions’.⁵¹ Emotional structures can influence normatively and socially desirable emotions. For William Reddy, an emotional regime is a ‘set of normative emotions and the official rituals, practices, and emotions that express and inculcate them’, and they are a ‘necessary underpinning of any stable political regime’.⁵² For Barbara Rosenwein and Riccardo Cristiani, an ‘emotional community’ is a group that adheres to the same valuations of emotions and how they should be expressed, and thus constitutes a community of emotional styles and norms.⁵³ Jonathan Heaney argues that the political and social use of emotions can construct an emotional state, referring to ‘the various ways in which the nation-state has been directly and indirectly involved in the construction and deconstruction of the emotional life of the polity; the degree to which it reflects (and constructs) dominant emotional regime(s) and norms; and how these processes change through time’.⁵⁴ Deborah Gould has suggested the concept of ‘emotional habitus’, being the epistemic knowledge and dispositions of a group that, if only partially consciously, form how a group engages with emotions.⁵⁵ Flam suggests that the prevailing emotional regimes within societies, and their corresponding ‘feeling rules’ are both defined by power holders within those societies (asymmetrically, to their advantage) and are an expression and symbol of their power.⁵⁶

The individual experience of emotion in transitional justice processes is thus inexorably linked to and mediated by the macro-context of normative emotional culture.⁵⁷ For Mihai, ‘taking the past seriously and engaging publicly with citizens’ politically relevant emotional responses represents a

⁵⁰ D’Aoust (n 9) 271.

⁵¹ Jon Elster, *Alchemies of the Mind: Rationality and the Emotions* (Cambridge University Press 1999) 262.

⁵² William M Reddy, *The Navigation of Feeling: A Framework for the History of Emotions* (Cambridge University Press 2001) 129.

⁵³ Barbara H Rosenwein and Riccardo Cristiani, *What Is the History of Emotions?* (Polity 2018) 39.

⁵⁴ Jonathan G Heaney, ‘Emotion as Power: Capital and Strategy in the Field of Politics’ (2019) 12 *Journal of Political Power* 224, 225.

⁵⁵ Deborah B Gould, *Moving Politics: Emotion and ACT UP’s Fight against AIDS* (The University of Chicago Press 2009) 32.

⁵⁶ Helena Flam, ‘The Transnational Movement for Truth, Justice and Reconciliation as an Emotional (Rule) Regime?’ (2013) 6 *Journal of Political Power* 363, 365.

⁵⁷ Nikos Demertzis (ed), *Emotions in Politics: The Affect Dimension in Political Tension* (Palgrave Macmillan 2013) 9.

first opportunity for institutions to embark on a process of democratic emotional socialisation'.⁵⁸ As a result, she suggests institutions should strive for clear, exemplary decisions to 'stimulate reflection' on what democratically appropriate emotions should look like, through a justification and explanation of what commitment to constitutional democracy requires. Exemplary practices are those that 'reflect citizens' legitimate negative emotions and filter their expression through democratic values'.⁵⁹ Naomi Head has recently argued that the use of emotions in political rhetoric 'does not necessarily lead to the acknowledgement of political responsibility or to actions to address the historically-constituted roots of contemporary structural injustices'.⁶⁰ Head suggests: 'While a sentimental politics is likely to signal alignment with a certain set of moral values, thereby simulating a desire for justice, it nonetheless lacks a sustained political commitment and evades questions of political responsibility for suffering embedded in historically constituted global structural injustices'.⁶¹ Head notes the role of emotion in political rhetoric as a potential vehicle to legitimise existing power structures and to include some and exclude others from the use of 'care, concern, and responsibility' in sentimental politics.⁶²

In particular, emotions play a role in providing narrative and normative content for national myths. Emotions are a key part of myths.⁶³ Bouchard notes: 'a well-established myth is characterized (and conditioned) by being primarily emotion-driven, which helps us understand the liberties it can take with reality and the resilience it can show when it faces contradictions'.⁶⁴ Richard Rorty writes 'stories about what a nation has been and should try to be are not attempts at accurate representation, but rather attempts to forge a moral identity'.⁶⁵ Public emotions include those articulated by public figures, in this context including political and church leadership and representatives of victim-survivor communities. Martha Nussbaum argues, 'Good public emotions do embody general principles, but they clothe them in the garb of

⁵⁸ Mihaela Mihai, *Negative Emotions and Transitional Justice* (Columbia University Press 2016) 8.

⁵⁹ *ibid* 10.

⁶⁰ Naomi Head, 'Sentimental Politics or Structural Injustice? The Ambivalence of Emotions for Political Responsibility' (2020) 12 *International Theory* 337.

⁶¹ *ibid* 339.

⁶² *ibid*.

⁶³ Gérard Bouchard, *Social Myths and Collective Imaginaries* (University of Toronto Press 2017) 6.

⁶⁴ *ibid* 25.

⁶⁵ Richard Rorty, *Achieving Our Country: Leftist Thought in Twentieth-Century America* (Harvard University Press 1999) 13.

concrete narrative history'.⁶⁶ National and religious myths depend less upon the mere act of incorporation of emotions relevant to historical abuses but rather seek to incorporate or exclude those emotions to the extent that they enable a constructive account of the state or church as a moral and political community. The honest reckoning with the emotions produced by historical abuses and reproduced in attempts to deal with the past is likely to produce a social ambivalence regarding an exclusively positive or unifying national or religious narrative or myth.⁶⁷ States and churches already employ emotions to advance their own nation-building and myth making, in their advancement of collective memory or the 'imagined communities' such as the nation,⁶⁸ in pursuit and production of 'profound emotional legitimacy' through political rituals like parades and public holidays.⁶⁹ For instance, in Ireland, Tom Inglis demonstrated, the main work of national habitus formation in the Irish context was 'outsourced' to the Catholic Church, which controlled the fields of education and health, who held a 'moral monopoly' over society.⁷⁰ Jonathan Heaney writes:

in the early decades of the 20th century we see a concerted construction of national habitus via a unified nationalist and religious narrative, orchestrated by the two main power blocs in that society, church and state, and reinforced on the ground via powerful nationalist and religious networks. This relational setting was repressive and conservative, giving rise to an 'emotional climate' characterized by guilt, shame and fear; a repressive emotional and sexual code. Yet, it also produced high levels of solidarity and social cohesion, and a national habitus in which identification with, and 'love for' the nation was central to individual's conception of selfhood and personal 'identity'.⁷¹

A variety of factors may impact the nature and extent of the emotional dimensions within public accounts of addressing the past. Clarke notes that the feelings of individuals and groups may align or contrast with dominant

⁶⁶ Martha Craven Nussbaum, *Political Emotions: Why Love Matters for Justice* (Belknap Press 2015) 201.

⁶⁷ Javier Krauel, *Imperial Emotions: Cultural Responses to Myths of Empire in Fin-de-Siècle Spain* (Liverpool University Press 2013) 179.

⁶⁸ Maurice Halbwachs and Lewis A Coser, *On Collective Memory* (University of Chicago Press 1992); Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Revised ed, Verso 2016).

⁶⁹ Kim Anderson, *A Recognition of Being: Reconstructing Native Womanhood* (Sumach Press 2000) 4.

⁷⁰ Tom Inglis, *Moral Monopoly: The Rise and Fall of the Catholic Church in Modern Ireland* (2nd ed, University College Dublin Press 1998).

⁷¹ Jonathan Heaney, 'Emotions and Nationalism: A Reappraisal' in Nicolas Demertzis (ed), *Emotions in Politics* (Palgrave Macmillan UK 2013) 260.

emotional regimes: 'Feelings operate through agencies that are embedded in particular historical inscriptions and are part of itinerant responses that are often collective but never fully predictable; they may or may not align with the emotional climate being produced by justice campaigns'.⁷² Pennebaker et al suggest: 'The degree of social sharing within a country about a nation's unwanted past can be related to a positive emotional climate if open discussions are encouraged or negative emotional climate if repressive governmental forces are at play'.⁷³ In creating or maintaining structures, Hoggett and Thompson note that states use emotions in the processes of governance and policy making through a variety of techniques: 'projection, where a government colludes with powerful anxieties by focusing them upon a particular target group which becomes construed as a social problem. Enactment occurs when a government, faced with a panic of some form, succumbs to the intense pressure to be seen to be doing something'.⁷⁴ Finally, they suggest states and their institutions may embody emotions through their existing rules, systems, structures, and procedures.⁷⁵

For Naomi Head, state apologies and reconciliation may involve mere performances of empathy that evade political responsibility or may involve a more genuine process of testimonial empathy: 'the acknowledgement of injustice and its historical and structural dimensions, subjective shifts of understanding, and collective political action'.⁷⁶ On Head's account, the focus in assessing whether an apology is mere performance or not requires attending to the affective dynamics of the narrative created. She is concerned that such narratives may provide some actors nothing more than a 'vicarious sensory experience that does little to alter their own sense of privilege'.⁷⁷ For Head, a politics of pity is where the 'asymmetry between the spectator and the sufferer is maintained – often through the over-identification and imagined comprehension enabled through sentiment – ensuring that no radical reflexivity turns our gaze towards our entanglements in the creation and perpetuation of vulnerabilities and injustice'.⁷⁸ In contrast, compassion requires recognising the connection 'between the personal and the political and ... entails the political recognition that while we are all vulnerable we are not so

⁷² Clarke (n 40) 19.

⁷³ James W Pennebaker, Dario Paez and Bernard Rimé (eds), *Collective Memory of Political Events: Social Psychological Perspectives* (Lawrence Erlbaum Associates 1997) ix.

⁷⁴ Hoggett and Thompson (n 8) 6.

⁷⁵ *ibid* 7.

⁷⁶ Head (n 60) 355.

⁷⁷ *ibid*.

⁷⁸ *ibid* 346.

in the same way or to the same degree'.⁷⁹ The structure of public emotions thus forms a crucial platform for the reception and discourse regarding appropriate emotional responses to historical-structural injustices.

5.3.3 *Emotions and Epistemic Injustice*

The emotions of victim-survivors may be subjected to epistemic injustice,⁸⁰ that is, the state and church mechanisms for addressing the past may be unable or unwilling to meaningfully listen to or hear survivor emotions – or a specific subset of their emotions. In doing so, transitional justice mechanisms may construct 'ideal type' survivors, who speak and act in an emotional register that confirms existing structures of power. Those who express challenging emotions, such as rage,⁸¹ or become emotional at issues that stretch beyond the endorsed paradigms of addressing the past, those who claim that Indigenous recognition is insufficient and decolonisation is required, for instance, may be excluded. More broadly, epistemic injustice regarding historical-structural injustices is likely to map on to existing forms of such injustice in the racialised and gendered recognition of emotion within legal processes.⁸²

In contrast, where expressions of victimhood are repressed, this may have the unintended consequence of consolidating collective memories associated with the repressed event.⁸³ For Head, engagement with the emotional experiences of others can 'disrupt our epistemic comfort and render visible dynamics and hierarchies hitherto unaccounted for by the powerful and unaccountable to the oppressed'.⁸⁴ In this regard, Head emphasises the emotional dimension to the distinction between knowledge and acknowledgement, familiar to transitional justice:

⁷⁹ *ibid.*

⁸⁰ Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford University Press 2007).

⁸¹ Sonali Chakravarti, *Sing the Rage: Listening to Anger after Mass Violence* (The University of Chicago Press 2014).

⁸² Antuan Johnson, 'Sexual Assault and Gendered Hate: A Case of Epistemic Injustice' (2017) 11 *Unbound* 91; Dina Lupin Townsend and Leo Townsend, 'Epistemic Injustice and Indigenous Peoples in the Inter-American Human Rights System' (2021) 35 *Social Epistemology* 147.

⁸³ James Pennebaker and Becky Banasik, 'On the Creation and Maintenance of Collective Memories: History as Social Psychology' in James Pennebaker, Dario Paez and Bernard Rimé (eds), *Collective Memory of Political Events: Social Psychological Perspectives* (Psychology Press 1997) 17.

⁸⁴ Head (n 60) 355.

Knowledge, for testimonial empathy, requires listening without presuming a complete or full understanding of the other. It does not seek to master the narrative or knowledge of the other, to subsume it within a pre-established hierarchy of ideas, values, and beliefs, or to reduce the other to fit our own limited imaginations or perspectives. To do so would be to conflate empathy with a strategy of knowing intended to perpetuate, rather than disrupt, the existing structures of injustice.⁸⁵

Finally, Head emphasises the risks of passive empathy, which could function as ‘an “epistemology of ignorance” (of not knowing, or of not wanting to know)’.⁸⁶ Instead Head calls for “radical reflexivity and epistemic humility that is self-critical rather than self-referential in its interrogation of position, privilege, and power’.⁸⁷ The task of genuinely listening to and hearing the emotions of victim-survivors remains a key challenge for the staff of transitional justice mechanisms and representatives of state and church.

5.3.4 *Emotions and Constitutive Forms of Power*

Finally, emotions may play a role in the fourth constitutive form of power. The classification by society as ‘black’, ‘Indigenous’, ‘poor’, or ‘victim’ may result not only in significant disempowerment, discrimination, and harm but also with a set of social norms and messaging that it is shameful to belong to these categories of inferiority. For historically marginalised groups, group identity and experience may confirm the emotional dimensions of a particular social identity, that is, feelings of shame or inferiority in individuals who belong to groups that have been both historically and currently marginalised. For instance, William Reddy argues that in situations of conquest or colonisation, where a normative emotional management strategy is imposed on a population, ‘emotional suffering becomes epidemic’.⁸⁸

Second, emotions can play a key part in the constitution and politics of victimhood. Judith Shklar insists that victimhood ‘has an irreducibly subjective component that the normal model of justice cannot easily absorb’.⁸⁹ Antti Malinen argues that for care leavers seeking justice for acts of historical abuses, being ‘part of this emotional community opened up opportunities for

⁸⁵ *ibid* 348.

⁸⁶ *ibid* 353.

⁸⁷ *ibid* 355.

⁸⁸ Reddy (n 52) 126.

⁸⁹ Judith N Shklar, *The Faces of Injustice* (Yale University Press 1990) 37.

empowerment through sharing and the validation of experiences'.⁹⁰ For Mihai, 'until we understand the role played by affective investment in collective identification and mobilization, we will not be in a position to understand the emergence and resilience of non-democratic collective identities: racism, xenophobia, explosive nationalism and religious intolerance'.⁹¹ Janine Natalya Clark argues that in transitional justice to date 'the neglect of emotional legacies represents a missed opportunity to explore how the meta emotions that people share – and which form part of "a social ontology of connection" – constitute potential new bases for building reconciliation in post-conflict societies'.⁹² Subsequent chapters will examine how states employ and perform emotions through the specific institutions of transitional justice (investigations, trials, redress, and apologies) and enable the consolidation of their power and legitimacy. In particular, subsequent chapters will explore whether framing the past in terms of gross violations of human rights, institutional responses to such violations, and in terms of transitional justice 'inevitably distorts the historical "reality" of collective mass atrocities and the victims' remembered experiences of it'.⁹³

5.4 HISTORICAL-STRUCTURAL INJUSTICES AND SHAME

Shame is an emotion which features both as a dimension of historical abuse and as an element of modern-day responses to such harms. There is a significant literature on shame across disciplines.⁹⁴ Kizuk notes: 'guilt is about a failure of doing whereas shame is about a failure of being. Unlike guilt, which focuses on failing to live up to a norm or breaking a rule, shame is often taken to be a response to a global failure of the self. This is because shame is, in structure, ontological rather than action-based – it is tied to our identity'.⁹⁵

Nussbaum argues that shame 'is a painful emotion responding to a sense of failure to attain some ideal state' and involves not only the realisation but also the denial that one is 'weak and inadequate in some way in which one expects

⁹⁰ Antti Malinen, 'Eleven Old Boys Crying Out for Revenge: Emotional Dynamics in Care-Leavers' Efforts to Seek Justice: Case Study of the Palhoniemi Reform School 1945–1946' (2021) 18 *No Foundations. An Interdisciplinary Journal of Law and Justice* 40, 60.

⁹¹ Mihaela Mihai, 'Theorizing Agonistic Emotions' (2014) 20 *Parallax* 31, 34.

⁹² Janine Natalya Clark, 'Emotional Legacies, Transitional Justice and Alethic Truth: A Novel Basis for Exploring Reconciliation' (2020) 18 *Journal of International Criminal Justice* 141, 145.

⁹³ Chrisje Brants and Katrien Klep, 'Transitional Justice: History-Telling, Collective Memory, and the Victim-Witness' (2013) 7 *International Journal of Conflict and Violence* 36, 48.

⁹⁴ Dolezal (n 20) 3.

⁹⁵ Sarah Kizuk, 'Settler Shame: A Critique of the Role of Shame in Settler-Indigenous Relationships in Canada' (2020) 35 *Hypatia* 161, 163.

oneself to be adequate.⁹⁶ For Nussbaum, only shame of a specific and limited sort can be constructive. It is possible to invite others to feel shame in non-insulting, non-humiliating, and non-coercive ways,⁹⁷ but it seems necessary for such attempts at constructive shaming to be founded on mutual respect. In contrast, 'shame punishments, historically, are ways of marking a person, often for life, with a degraded identity.'⁹⁸ As a result, Nussbaum concludes that society's shaming behaviour is not to be easily trusted.⁹⁹

Luna Dolezal concurs that 'shame is an emotion which is experienced by a subject when his or her perceived shortcomings or failings are observed by another'.¹⁰⁰ For Dolezal, shame is both embodied and social.¹⁰¹ She notes the fact that shame is 'constitutive and necessary', particularly as a motivation of skill formation.¹⁰² She usefully distinguishes between acute and *chronic* body shame, which 'arises because of more ongoing or permanent aspects of one's appearance or body, such as one's weight, height or skin colour. It can also arise because of some stigma or deformity, such as a scar or disability ... Shame, in this case, is not experienced as an acute disruption to one's situation, but rather as a background of pain and self-consciousness, becoming more acute perhaps in moments of exposure or self-reference'.¹⁰³

Shame is a feature of historical abuse that pervades several of the societies examined in this book. Relying on testimony in empirical work is 'particularly difficult' when dealing with shame and embarrassment as it is often bypassed or repressed.¹⁰⁴ Across the ninety inquiries discussed in Chapter 6, there are at least 1,090 references to shame. Persistent shame may explain failures to process child sexual abuse or PTSD.¹⁰⁵ For instance, Swain and Howe note the role of shame in Australian maternity homes, referencing a 1908 Charity Review article describing them as a place where, for mothers, 'their shame can be hidden and where they can live until their infants can do without their care'.¹⁰⁶ Similarly, in

⁹⁶ Martha Nussbaum, *Hiding from Humanity: Disgust, Shame, and the Law* (Princeton University Press 2004) 183.

⁹⁷ *ibid* 213–14.

⁹⁸ *ibid* 230.

⁹⁹ *ibid* 220.

¹⁰⁰ Dolezal (n 20) 4.

¹⁰¹ *ibid* x.

¹⁰² *ibid* 40.

¹⁰³ *ibid* 10.

¹⁰⁴ *ibid* 9.

¹⁰⁵ Candice Feiring and Lynn S Taska, 'The Persistence of Shame Following Sexual Abuse: A Longitudinal Look at Risk and Recovery' (2005) 10 *Child Maltreatment* 337.

¹⁰⁶ 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, 36.

twentieth-century Ireland, chronic shame was a persistent feature of the Catholic faith and reinforced in both religious rituals such as confession and through Irish families, schools, and communities, with particular emphasis on women and children.¹⁰⁷

McAlinden notes that a politics of shame was integral to both Irish national and religious identity and that this identity was bolstered by bystanders in Irish families and institutions who failed to challenge the status quo, with the result that victim-survivors were silenced for decades.¹⁰⁸ Shame in Ireland attached in particularly gendered terms, targeting unmarried mothers and those who transgressed or were perceived to transgress other Catholic sexual norms.¹⁰⁹ In the context of the Magdalene Laundries, oral histories given by victim-survivors reveal ‘women were conceptualised as mud and rubbish to be disposed of, as inexpensive goods for sale or as natural forces that were out of control. In that blinkered society they epitomised the worst side of illness and disability’.¹¹⁰

The religious nature of the institutions involved and the actors engaged in historical abuse raises the possibility of a particularly religious experience of shame, what some have dubbed sacramental shame: ‘People often dispense this shame believing it will help their loved ones to conform to God’s will and to spend eternity in heaven’.¹¹¹ As with the full range of emotions, shame can be analysed across the four forms of power developed in Chapter 4.

5.4.1 *Shame and Agency*

As seen above, survivor shame forms a pervasive reaction to the experience of historical-structural injustices. Shame retains the potential to form an element of responding to historical abuse. Shame is an emotion that can be deployed

¹⁰⁷ Anne-Marie McAlinden, ‘Apologies as “Shame Management”: the Politics of Remorse in the Aftermath of Historical Institutional Abuse’ (2022) 42 *Legal Studies* 137, 140.

¹⁰⁸ *ibid* 141.

¹⁰⁹ Clara Fischer, ‘Gender, Nation, and the Politics of Shame: Magdalen Laundries and the Institutionalization of Feminine Transgression in Modern Ireland’ (2016) 41 *Signs: Journal of Women in Culture and Society* 821; Lindsey Earner-Byrne, ‘The Boat to England: An Analysis of the Official Reactions to the Emigration of Single Expectant Irishwomen to Britain, 1922–1972’ (2003) 30 *Irish Economic and Social History* 52.

¹¹⁰ Miguel-Angel Benítez-Castro and Encarnación Hidalgo-Tenorio, ‘“We Were Treated Very Badly, Treated Like Slaves”: A Critical Metaphor Analysis of the Accounts of the Magdalene Laundries Victims’ in Pilar Villar-Argáiz (ed), *Irishness on the Margins* (Springer International Publishing 2018) 120.

¹¹¹ Dawne Moon and Theresa W Tobin, ‘Sunsets and Solidarity: Overcoming Sacramental Shame in Conservative Christian Churches to Forge a Queer Vision of Love and Justice’ (2018) 33 *Hypatia* 451, 453.

in a single interaction between victim-survivor and perpetrator. On this approach, shaming is reintegrative when it reinforces an offender's membership in civil society.¹¹² Restorative justice literature suggests two elements to reintegrative shaming: (1) the explicit disapproval of the wrongful act (shaming) by respected others; and (2) the ongoing inclusion of the offender within a meaningful relationship (reintegration).¹¹³ McAlinden notes the potential of reintegrative shaming to address child sexual abuse, by aiming 'to engage local communities in the management and reintegration of sex offenders and to directly address wider concerns about the presence of released sex offenders in the local community'.¹¹⁴ As a result, if shame is to play constructive role in addressing historical-structural injustices, its potential is likely to be at the interpersonal level.

5.4.2 *Shame and Structure*

Second, shame is a key part of the emotional state or structure regarding social norms. John Elster concurs that shame is the most crucial emotion to the maintenance and enforcement of social norms.¹¹⁵ Shame not only operates in individual experiences and social interactions but also 'plays a key normative and constitutive role in embodied, intersubjective and socio-political relations'.¹¹⁶ Thomas Scheff and Suzanne Retzinger note that shame operates between individual emotional experience and the broader social structure of society.¹¹⁷ In particular, they note that shame is closely linked to anger-rage, which often can lead to violence or aggression and serve as a destructive social force.

In this context, shame may form a central part of historical-structural injustices for historically marginalised groups. Luna Dolezal notes that 'the propensity to shame, and its consequences, is very much dependent on one's position within a social group'.¹¹⁸ She notes: 'shame is deployed as a strategy of social exclusion, as a means to oppress a particular social group, this shame is often invisible, unacknowledged or individually and collectively bypassed'.¹¹⁹

¹¹² McAlinden (n 35) 145.

¹¹³ John Braithwaite, *Restorative Justice & Responsive Regulation* (Oxford University Press 2002) 12–13.

¹¹⁴ McAlinden (n 35) 144.

¹¹⁵ Elster (n 51) 146.

¹¹⁶ Dolezal (n 20) 12.

¹¹⁷ Scheff and Retzinger (n 30) 45.

¹¹⁸ Dolezal (n 20) 90.

¹¹⁹ *ibid* 95.

Dolezal thus emphasises that the structure of shame may not align with the emotional experience of it (or lack thereof).¹²⁰ Instead, the structure of shame may manifest as a lack of self and/or social recognition of equal status and worth.¹²¹ This form of shame does not attach merely to individuals but entire social groups and can be inherited and transmitted from one generation to the next, a permanent part of both individual and group identities.¹²² Such structural forms of shame attach to historically marginalised groups and peoples, including Indigenous peoples, people of colour, women, and children, and form an inescapable form of shame that becomes part of social identity.¹²³ The results of such forms of shame are to reenforce a subjective experience of inferiority, which can lead to damaging emotional and cognitive outcomes and ‘a state of profound disempowerment’.¹²⁴ Shame appears a particularly pernicious emotion when operating at the level of social, political and religious structures.

5.4.3 *Shame and Epistemic Injustice*

Third, shame can be deployed as a form of epistemic injustice. Cheshire Calhoun notes, ‘the power to shame is likely to be concentrated in the hands of those whose interpretations are socially authoritative’.¹²⁵ Cecilia Mun suggests that ‘standard accounts of shame, understood as espousing feeling rules for shame (including shaming, being shamed, and experiences of shame), are mechanisms for the practice of systemic testimonial injustices at the social-practical level of analysis’.¹²⁶ For example, Mun suggests practices of gaslighting or micro-aggressions reflect this use of shame.¹²⁷ To counter this, Enright and Ring suggest that epistemic justice requires ‘the ashamed state to engage in a risky exposure to victim-survivors’ testimony and to the possibility that doing so may transform the state and its law’.¹²⁸

¹²⁰ *ibid.*

¹²¹ *ibid.* 95–7.

¹²² *ibid.* 93.

¹²³ Julien A Deonna, Raffaele Rodogno and Fabrice Teroni, *In Defense of Shame: The Faces of an Emotion* (Oxford University Press 2012) 227.

¹²⁴ Dolezal (n 20) 93.

¹²⁵ Cheshire Calhoun, ‘An Apology for Moral Shame’ (2004) 12 *Journal of Political Philosophy* 127.

¹²⁶ Cecilia Mun, ‘Rationality through the Eyes of Shame: Oppression and Liberation via Emotion’ (2019) 34 *Hypatia* 286, 298.

¹²⁷ *ibid.*

¹²⁸ Máiréad Enright and Sinéad Ring, ‘State Legal Responses to Historical Institutional Abuse: Shame, Sovereignty, and Epistemic Injustice’ (2020) 55 *Éire-Ireland* 68, 88.

5.4.4 *Shame and Ontological Power*

Finally, shame can form part of the constitutive use of biopower. Nations can shame others and can bring shame upon themselves by recognising and acknowledging the way they have ‘treated others who were in the past understood as the origin of shame’.¹²⁹

Although body shame is fundamental to one’s embodied subjectivity and social identity,¹³⁰ Dolezal emphasises that *chronic* body shame is also deeply involved in the constitutive use of power. This is particularly evident in Elias’ account of the civilisation process. Dolezal argues, ‘Although Foucault does not explicitly discuss shame in his analysis of discipline and embodiment, key to his theory are several features of the shame experience, such as objectification, alienation, internalization, and normalization’.¹³¹ In contrast, Dolezal argues that for Norbert Elias: ‘the civilizing process is driven by a deeper desire to avoid social exclusion and shame in order to secure and maintain social standing’.¹³² Dolezal continues that for Elias: ‘as bodies became the primary site of social worth and estimation, central to the social value system, fear of social degradation and the loss of social standing make it increasingly imperative for individuals to regulate and manage the body. Avoiding social exclusion and accruing body capital are central concerns for the subject, and these concerns are inextricably linked to the experience of body shame’.¹³³

In contrast, Deigh suggests that shame may be productive where it reaffirms a commitment and failure to live up to the ideals of liberal democratic institutions.¹³⁴ Lisa Guenther distinguishes between shame as ‘a feeling of collective ethical responsibility, and humiliation as an instrument of political domination’.¹³⁵ Sara Ahmed examines how apologies involving shame can function as nation-building, in which ‘what is shameful about the past is covered over by the statement of shame itself. On her account, shame may be restorative ‘only when the shamed other can “show” that its failure to measure up to a social ideal is temporary’.¹³⁶

¹²⁹ Sara Ahmed, *The Cultural Politics of Emotion* (2nd ed, Edinburgh University Press 2014) 108.

¹³⁰ Dolezal (n 20) 99.

¹³¹ *ibid* 155.

¹³² *ibid* 71.

¹³³ *ibid* 73.

¹³⁴ John Deigh, *Emotions, Values, and the Law* (Oxford University Press 2008) 109–11.

¹³⁵ Lisa Guenther, ‘Resisting Agamben: The Biopolitics of Shame and Humiliation’ (2012) 38 *Philosophy & Social Criticism* 59, 60.

¹³⁶ Ahmed (n 129) 107.

To date this constitutive use of shame has failed to achieve this restorative function in the context of addressing historical-structural injustices. Clara Fischer notes that ‘Irish nationbuilding engages a politics of shame that operates both via the construction of shamed, deviant Others hidden away in Ireland’s network of institutions and via the shame brought onto itself precisely through the maltreatment meted out to those deemed deviant Others. The Irish nation thus reproduces itself in this paradoxical, circular manner, as it draws on shame’s capacity to bind people in the creation of national collectivities through the establishment of “insiders” and “outsiders” or through the assumption of collective or supra-individual failings that make us feel shame as (the) people of Ireland’.¹³⁷ Máiréad Enright and Sinéad Ring borrow from the work of Giorgio Agamben, and ‘understand true shame as an experience of the collapse of the sovereign self. When speaking about historical institutional abuse, state actors have positioned the Irish state as ashamed of its past. On their view, state shame as performed in statements of this kind entails no loss of sovereignty. Rather, the post-authoritarian Irish state’s identification with shame has run alongside new, intensely productive politics of nation-building reinforcing state sovereignty and inaugurating new techniques of government’.¹³⁸

McKenzie et al note the application of shame to Australia at the level of a national myth: ‘there has been extensive discussion of collective shame regarding, for example, Australia’s violent history of colonisation; its present-day treatment of Indigenous people (e.g., the stigmatising and divisive Northern Territory Intervention) and the mandatory, prolonged detention of asylum seekers in harsh conditions. In these cases, shame is not being applied to a person by a community, although activists in these areas have often used the language of shame in their indictments of political leaders. Shame is primarily applied to the nation and its government by a section of its own citizenry. Shame is seen as evidence of both moral conscience and moral failure – the moral conscience of part of the nation directed at the government and the moral failings of other citizens in that same nation. These calls for communal shame are thus not only calls for accountability and reparatory action, but a contestation of the moral fabric of the nation’.¹³⁹ Sara Ahmed argues these performances separate shame from victim-survivors’ experiences,

¹³⁷ Clara Fischer, ‘Revealing Ireland’s “Proper” Heart: Apology, Shame, Nation’ (2017) 32 *Hypatia* 754, 757.

¹³⁸ Enright and Ring (n 128) 71.

¹³⁹ Jordan McKenzie and others, ‘Social Emotions: A Multidisciplinary Approach’ (2019) 3 *Emotions: History, Culture, Society* 187, 192.

shifting shame from a personal and individual matter to one of national identity that the state alone deems it is capable to address.¹⁴⁰

In Canada, Sarah Kizuk argues that ‘a politics of recognition informed by settler shame has done little to actually see or hear Indigenous peoples on their own terms. Since settler shame is a self-directed emotion that seeks to be discharged through reconciliatory processes that are dependent on liberal recognition, it remains a mere optics of justice wedded to settler ignorance’.¹⁴¹ She defines settler shame: ‘to be a personal experience related to the recognition of our identity as complicit in a racist and colonial world (being bad), as well as the concomitant realization that we might lose control over our identity and become defined solely as this bad self both by ourselves but also by our social world at large. Settler shame causes anxiety and is profoundly painful precisely because we do not want to jeopardize our social standing or lose the ability to self-define’.¹⁴²

Denise Starkey notes the theological dimensions of shame, especially within the Roman Catholic tradition, cautioning: ‘Theologies that do not address the different subject positions of perpetrators and victims, nor account for the dynamics of power and the absence of freedom of survivors cannot be said to ensure liberation. Shame must be “unmasked” in order to “derail” the shattering effects that lead to survivors being held accountable for the harm done to them while many perpetrators continue to evade responsibility’.¹⁴³ Thomas Scheff notes: ‘Denial of shame goes hand in hand with denial of interdependence. An accurate and effective social science requires that shame and interdependence be brought into the light of day’.¹⁴⁴

5.5 THE DANGER OF SHAME AND HISTORICAL- STRUCTURAL INJUSTICES

There is thus significant potential for shame to feature in the emotional and affective dimensions of addressing historical abuses. To the extent that it is turned to the purposes of nation-building and at the expense of the preferences of victim-survivors, such shame rhetoric and practices may risk further distress, re-traumatisation or alienation from society. Krista Thomason notes: ‘When we shame, we attempt to define another person’s identity in social life,

¹⁴⁰ Ahmed (n 129) 102.

¹⁴¹ Kizuk (n 95).

¹⁴² *ibid* 164.

¹⁴³ A Denise Starkey, *The Shame That Lingers: A Survivor-Centered Critique of Catholic Sin-Talk* (Peter Lang 2009) 4.

¹⁴⁴ Scheff (n 30) 54.

but this is an illegitimate exercise of power over another moral agent. In shaming, we take ourselves to be moral educators who are immune to the flaws that we point out in others.¹⁴⁵ Ahmed notes: ‘The politics of shame is contradictory. It exposes the nation, and what it has covered over and covered up in its pride in itself, but at the same time it involves a narrative of recovery as the re-covering of the nation’.¹⁴⁶ In their response to historical abuse, states and churches may continue to shame victim-survivors in their treatment in inquiries, prosecutions, or redress mechanisms. Fischer notes: ‘Productive shame, and its potential for change, is thus subverted, as the continuous project of nationbuilding, in its desire for pride, renders productive shame impossible, as the performance of the gendered politics of shame continues to establish and then cover deviant Others as instances of national shame’.¹⁴⁷ Instead, Ahmed notes, ‘The fear of being seen as “like them” structures this shame narrative’.¹⁴⁸ Kizuk concurs: ‘Rather than operating as an affective transformative experience, settler shame leads to a collapse back into a remaking of settler identity. In other words, the responsibility becomes a responsibility to fix the image of the settler rather than repair the damaged relationship with Indigenous peoples. This is because we, as settlers, want to stop feeling bad so we take steps to discharge our shame in such a way that does not challenge the material conditions that have created and maintain racist and colonial injustice. Our individual (and national) efforts to resolve the experience of shame have taken place through the recognition of our shame experience: it is self-referential. To flee this shameful identity becomes, then, a project to restore our identity as superior’.¹⁴⁹

Enright and Ring suggest that despite its misuse by states, shame retains radical potential because it is destabilising and can awaken a community to knowledge of past wrongdoing and prompts a duty to bear witness and make space for the wrongs done to others: ‘Epistemic justice is incompatible with mere professions of shame unaccompanied by any radical change in the state’s normal legal practices’. They suggest, ‘Embracing shame as a mode of doing justice to the past in Ireland must mean decentering and reconfiguring established state attitudes to law, allowing new epistemic frames for the voicing and witnessing of traumatic experiences of historical institutional abuse to emerge. This is a process of anxious struggle, far removed from the

¹⁴⁵ Krista K Thomason, *Naked: The Dark Side of Shame and Moral Life* (Oxford University Press 2018) 13.

¹⁴⁶ Ahmed (n 129) 112.

¹⁴⁷ Fischer (n 137) 755.

¹⁴⁸ Ahmed (n 129) 111.

¹⁴⁹ Kizuk (n 95) 166.

comforts of the old sovereignty; the state must risk established practice and “act, *without guarantees*, for the good of all”.¹⁵⁰ Dolezal suggests that structural forms of shame must be overcome collectively: ‘socially inferior groups must invert chronic shame – a structural feature of their subjectivities – into pride in order to achieve collective and personal liberation’.¹⁵¹

Alternative emotions may be more suitable than shame at structural, epistemic and ontological levels. Brian Lickel et al note that the use of guilt rather than shame discourse may be more suitable for human rights violations: ‘Insofar as shaming promotes anger, humiliation, and denial rather than empathy, guilt, and responsibility, shaming may harden rather than resolve the problem of human rights violations’.¹⁵² One suggestion for how emotions may impact on responsibility for structural injustice is that greater awareness of historical abuses may prompt repentance. Linda Radzik notes, ‘Repentant persons reject their former actions, habits, thoughts, or character traits in favor of a new set of values, commitments, dispositions, and intentions’.¹⁵³ She notes:

Repentant persons acknowledge that their former actions were wrong and neither excused nor justified by some other consideration. In repenting, one sometimes acknowledges that one’s past values – the moral views to which one had dedicated oneself – were wrongful. At other times, one continues to endorse the old set of values but criticizes oneself as having fallen short in one’s pursuit of them. Repentance is sometimes described as both accepting a wrong as one’s own and rejecting it. One commits or recommits oneself to the right and the good. This combination of a rejection of the past as wrongful and a commitment to better values makes the emotion of repentance a generally preferable response to wrongdoing than related emotions of self-assessment such as guilt, regret, remorse, or shame.¹⁵⁴

Taiaiake Alfred suggests the need for restitution rather than shame, as a ‘ritual of disclosure and confession in which there is an acknowledgement and acceptance of one’s harmful actions and a genuine demonstration of sorrow and regret, constituted in reality by putting forward a promise to never again do harm and by redirecting one’s actions to benefit the one who has been

¹⁵⁰ Enright and Ring (n 128) 90, emphasis in original.

¹⁵¹ Dolezal (n 20) 97–8.

¹⁵² Brian Lickel, Toni Schmader and Marchelle Barquissau, ‘The Evocation of Moral Emotions in Intergroup Contexts: The Distinction between Collective Guilt and Collective Shame’ in Nyla R Branscombe and Bertjan Doosje (eds), *Collective Guilt* (Cambridge University Press 2004) 52.

¹⁵³ Linda Radzik, *Making Amends: Atonement in Morality, Law, and Politics* (Oxford University Press 2009) 67.

¹⁵⁴ *ibid.*

wronged. Even the act of proposing a shift to this kind of discussion is a radical challenge to the reconciling negotiations that try to fit us into the colonial legacy rather than to confront and defeat it'.¹⁵⁵ In its continued reliance on the legitimacy of 'othering' and its potential to be subverted to maintain existing structures of power and nationhood, shame remains a deeply challenging concept and emotion to be employed publicly and in an exemplary fashion, especially in the contexts of addressing historical-structural injustices.

5.6 CONCLUSION

In the context of historical abuses, the interactions of emotions and power in shaping past and re-enforcing present cultures and structural injustices remain underexplored. Transitional justice is an area of law and policy that has long laid claim to being able to provide healing and catharsis through its operations and institutions, but this claim lacks any widespread empirical validation to date. Emotions thus have the potential to interact with power as a key reason and cause for the nature and shape of a society or church's attempts to deal with the past. The role of emotions may offer a useful element of the framework to explain the opportunities and limitations within certain national and religious contexts. This book will not engage in a novel empirical evaluation of the emotions of individual victim-survivors beyond existing studies of the emotional dimensions of transitional justice practices in subsequent chapters. Instead, it will examine especially public expression of emotion and affect, with the potential for exemplary, norm-setting functions. Emotions can be evaluated as they emerge across the four dimensions of power discussed in Chapter 4: agency, structure, epistemology, and ontology. In the absence of comparative empirical analysis, reliance can be placed on both explicit references to the dimensions of power and emotion in existing processes and in a construction of these factors in the approaches taken by states and church. It is to these processes: inquiries, accountability, reparations, reform, apologies, and reconciliation – as elements of transitional justice – that the rest of the book is addressed.

Particular emphasis is placed on the emotion of shame. As an emotion that in its structure is a criticism of individual identity rather than individual conduct, it is an emotion that is pervasive in existing accounts of historical-structural injustices but also in attempts to respond to the past. The suggestion

¹⁵⁵ Taiaiake Alfred, 'Restitution Is the Real Pathway to Justice for Indigenous Peoples' in Gregory Younging, Jonathan Dewar and Mike DeGagne (eds), *Response, Responsibility, and Renewal: Canada's Truth and Reconciliation Journey* (Aboriginal Healing Foundation 2009) 182.

of this chapter is that while shame may play some beneficial role at an individual level, when deployed by powerful actors across existing structures, it is capable of re-enforcing the structure of society based on 'othering' and the creation of inferior social categories. As a result, public shaming is a technology of domination, assimilation, and civilisation and should play no part in a transitional justice that seeks to address historical-structural injustices themselves based on othering, inferiority, and the reproduction of violence over time.